

CITY OF BILLINGS

**CITY OF BILLINGS MISSION STATEMENT:
TO DELIVER COST EFFECTIVE PUBLIC SERVICES
THAT ENHANCE OUR COMMUNITY'S QUALITY OF LIFE**

AGENDA

COUNCIL CHAMBERS

November 27, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Mayor Tussing

ROLL CALL

MINUTES – November 13, 2006

COURTESIES – Finance & Administrative Services

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 and #6 - #8

ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

CONSENT AGENDA:

1. A. **Bid Awards:**

(1) **W.O. 01-05: Lake Hills Storm Drain.** (Opened 11/14/06).

Recommend delaying the award to 12/11/06.

[Corresponding Staff Memo A1](#)

(2) **W.O. 06-20: Downtown Billings Wayfinding Signage.** (Opened 11/14/06). Recommend delaying the award to 12/11/06.

[Corresponding Staff Memo A2](#)

(3) **2007 Tandem Dump Truck with Plow.** (Opened 11/14/06). Recommend Motor Power International, \$125,947.00.

[Corresponding Staff Memo A3](#)

(4) One (1) or Two (2) Current New Model Year Custom Pumper-Fire Apparatus. (Opened 11/14/06). Recommend Sutphen Corporation, \$749,953.92 for two trucks.

[\(Corresponding Staff Memo A4\)](#)

B. Modification to Law Enforcement Personnel Reimbursable Agreement with the Transportation Security Administration (TSA), \$160,000.00 for period 10/1/06 – 9/30/07.

[\(Corresponding Staff Memo B\)](#)

C. LED Traffic Signal Project Incentive Agreement with Northwestern Energy.

[\(Corresponding Staff Memo C\)](#)

D. Development Agreement with Rocky Mountain Community Church for C/S 1011, Amended Tr. B-1, \$0.00.

[\(Corresponding Staff Memo D\)](#)

E. Agreement to provide law enforcement data processing services for Yellowstone County, \$83,970.00, term: 7/1/06 – 6/30/07.

[\(Corresponding Staff Memo E\)](#)

F. Professional Services Contract for architectural services for federally funded Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) projects and other general architectural services needed by the Airport, CTA Architects and Engineers, term: 5 years.

[\(Corresponding Staff Memo F\)](#)

G. Application to *Safe Route to School Program* for Chandelier Circle Connection to the Big Ditch Trail.

[\(Corresponding Staff Memo G\)](#)

H. Resolution of Intent to dispose of City-owned property described as Lot 1, Block 1 and Lots 1 and 2, Block 2, Arlene Subdivision and setting a public hearing for 1/8/07.

[\(Corresponding Staff Memo H\)](#)

I. Resolution of Intent to create SID 1375: water, sanitary sewer, storm drain, curb and gutter and street improvements on Claremont Road, and setting a public hearing for 12/18/06.

[\(Corresponding Staff Memo I\)](#)

J. Acknowledging receipt of petition #06-15: to annex 39.55 acres described as Tr. 1A, C/S 3279 Amended and generally located east of the intersection of Grand Avenue and 54th St. W adjacent to Bishop Fox Subdivision, Rod Wilson and Judith Deines, owners & petitioners, and setting a public hearing for 12/11/06.

[\(Corresponding Staff Memo J\)](#)

K. Final plat of Josephine Crossing Subdivision.
[\(Corresponding Staff Memo K\)](#)

L. Bills and Payroll.

- (1) October 27, 2006
[\(Corresponding Staff Memo L1\)](#)
- (2) November 3, 2006
[\(Corresponding Staff Memo L2\)](#)
- (3) October 1 – October 31, 2006 (Municipal Court)
[\(Corresponding Staff Memo L3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

- 2. PUBLIC HEARING AND SPECIAL REVIEW #830:** A special review to allow three (3) six-plex apartment buildings to be known as Aspen Grove Townhomes in a Residential-6,000 zone described as Lot 2, Block 6 and Lots 1 & 2, Block 5 of Aspen Grove Subdivision, 2nd Filing. William Eaton, owner; Brian Johnson, Homesite Designers, agent. Zoning Commission recommends denial. **(Action:** approval or disapproval of Zoning Commission recommendation.)
[\(Corresponding Staff Memo 2\)](#)
- 3. PUBLIC HEARING AND VARIANCE #OP06-03:** a variance from Site Development Ordinance Section 6-1203(j) regarding parking spaces, on Lots 21-24, Block 1, Mandelkow Subdivision Amended, located at 1826 Grand Avenue, West Park Denture Clinic, applicant. Staff recommends denial. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 3\)](#)
- 4. PUBLIC HEARING AND RESOLUTION** authorizing the disposal of City-owned property described as a portion of Lot 10, Block 5, O'Leary Subdivision by exchange for right-of-way dedication in the C/S 606, Tr. B at no cost. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 4\)](#)
- 5. PUBLIC HEARING AND RESOLUTION** authorizing the disposal of City-owned property described as a house located at 1525 54th St. W and awarding a bid. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 5\)](#)

6. **2007 MONTANA LEGISLATIVE PRIORITIES** -- discussion and finalization. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 6\)](#)
7. **RESOLUTION** creating the Cobb Field Steering Committee, making appointments, assigning a term and defining its role. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 7\)](#)
8. **COUNCIL APPOINTMENTS:**
(A) Appointment of Council voting delegate and alternate to the National League of Cities. **(Action:** approval or disapproval of appointments.)
[\(Corresponding Staff Memo 8A\)](#)
(B) Appointment of Councilmember to Library/COT Joint Project Committee. **(Action:** approval or disapproval of appointment.)
[\(Corresponding Staff Memo 8B\)](#)
9. **PUBLIC COMMENT on Non-Agenda Items** -- Speaker sign-in required.
(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

Council Initiatives

ADJOURN

(NOTE: Additional information on any of these items is available in the City Clerk's Office)

Visit our Web site at:
<http://ci.billings.mt.us>

CALENDAR (Council AND Boards & Commissions)

NOVEMBER:

11/27/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
11/28/2006	Planning Board	6:00 p.m.	4 th Floor Library
11/29/2006	Housing Authority	NOON	2415 1 st Avenue North

DECEMBER:

12/04/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
12/05/2006	Yellowstone Historic Preservation Board Community Development Board Zoning Commission Aviation & Transit Commission Board of Adjustment	8:00 a.m. 3:00 p.m. 4:30 p.m. 5:30 p.m. 6:00 p.m.	4 th Floor Library 4 th Floor Library Council Chambers Airport Terminal Council Chambers
12/06/2006	Policy Coordinating Committee	8:00 a.m.	4 th Floor Library
12/07/2006	Human Relations Commission	12:15 p.m.	CH Conference Room
12/11/2006	Parking Advisory Board REGULAR Council Meeting	4:00 p.m. 6:30 p.m.	CH Conference Room Council Chambers
12/12/2006	Planning Board Traffic Control Board	6:00 p.m. NOON	4 th Floor Library 4 th Floor Library
12/13/2006	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
12/14/2006	Library Board Homelessness Committee	NOON 2:00 p.m.	Library 3 rd . Floor Library
12/18/2006	Council WORK SESSION REGULAR Council Meeting	5:30 p.m. 6:30 p.m.	Community Center 360 N. 23 rd St. Council Chambers Council
12/21/2006	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
12/25/2006	CHRISTMAS DAY OBSERVED – CITY OFFICES CLOSED		
12/26/2006	Planning Board REGULAR Council Meeting	6:00 p.m. 6:30 p.m.	CANCELLED CANCELLED
12/27/2006	Housing Authority Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	2415 1 st Avenue North CH Conference Room
12/28/2006	Yellowstone County Board of Health	TO BE ANNOUNCED	

A1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, November 27, 2006

TITLE: Work Order 01-05, Lake Hills Storm Drain- Delaying Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 05-07 on November 14, 2006. Originally, the city was going to construct an outfall from Lake Hills Subdivision to Five-Mile Creek to handle the storm water in Lake Hills Subdivision. After careful evaluation of the outfall, it was determined to be cost prohibitive. Interstate Engineering, Inc. performed a feasibility study to recycle the storm water from Lake Hills Subdivision onto Lake Hills Golf Course. The feasibility study proved that retaining the storm water on the Golf Course was more economical. This will constitute the construction of more ponds on the Golf Course to be built in three phases. At the April 24, 2005, City Council Meeting, City Council approved an amendment to the Lake Hills Storm Water Maintenance Agreement to allow the Golf Course to maintain the storm water ponds that need to be constructed on the Golf Course. This project will construct phase I of the feasibility study, which includes the construction of one pond and the expansion of two existing ponds.

ALTERNATIVES ANALYZED:

1. Delay awarding Work Order 01-05, Lake Hills Storm Drain till the December 11, 2006, City Council Meeting.

FINANCIAL IMPACT: Funding for Work Order 01-05, Lake Hills Storm Drain will be provided from Storm Drain Funds in FY '07.

RECOMMENDATION

Staff recommends that Council delay the award of construction contract for Work Order 01-05, Lake Hills Storm Drain to allow city staff more time to review bids received.

Approved By: City Administrator City Attorney [\(Back to Consent Agenda\)](#)

A2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Work Order 06-20, Downtown Billings Wayfinding Signage – Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received for Work Order 06-20 on November 14, 2006. This project will install wayfinding signs in the downtown area to direct pedestrians and drivers to points of cultural interest. Included in the project are 24 wayfinding directional signs in the downtown area, plus a gateway monument sign on South 27th Street.

RECOMMENDATION

Staff recommends that Council delay award of the construction contract for Work Order 06-20, Downtown Billings Wayfinding Signage, until their December 11 meeting to allow more time for evaluation of bids.

Approved By: **City Administrator** **City Attorney**

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A3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 27, 2006

TITLE: Bid Award for a 2007 Current Model Tandem Dump Truck with Plow
DEPARTMENT: Public Works Department
PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Public Works Department opened bids for a 2007 current model Tandem Dump Truck with Plow on November 14, 2006, in accordance with the approved equipment replacement plan.

FINANCIAL IMPACT: Funding for the Tandem Dump Truck with Plow is from the Construction and Equipment Fund from the FY07 budget. 4 bids were received as follows:

<u>Vendor</u>	<u>Bid</u>	<u>Trade In</u>	<u>Net Bid</u>
Motor Power (International)	\$137,447	\$11,500	\$125,947
I-State	\$138,202	\$11,500	\$126,702
Tri-State	\$143,825	\$11,500	\$132,325

One bid did not meet the minimum specifications and is not shown above.

RECOMMENDATION

Staff recommends that council approve the bid to Motor Power (International) in the amount of \$125,947.

Approved By: City Administrator City Attorney

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Bid Award – Two Current Model Year Fire Apparatus
DEPARTMENT: Fire
PRESENTED BY: Marvin L. Jochems, Fire Chief

PROBLEM/ISSUE STATEMENT: Specifications were developed by the Fire Departments Internal Equipment Committee. The call for sealed bids notice was published on November 2, and 9, 2006. Fourteen bid packets were either mailed or picked up by fire apparatus vendors between October 13, 2006 and October 23, 2006. Bid opening was November 14, 2006. Five vendors responded. Hughes Fire Equipment, Springfield, Oregon, Sutphen Corporation, Amlin, Ohio and Montana Fire Works, Bozeman, Montana submitted proposals. Big Sky Fire Equipment and Custom Fire Apparatus submitted letters of no bid.

The three Proposals were reviewed by the members of the Equipment Committee. A comparison summary of Base Bid #1 which is the price delivered by the Manufacturer: Hughes Fire Equipment \$396,751.00 per truck for a total of \$793,502 for two trucks; Montana Fire Works \$433,120.40 per truck for a total of \$866,240.80 and Sutphen Corporation \$377,976.96 per truck for a total \$755,953.92 for two trucks.

A comparison summary of Base Bid #2 which is the price if we take delivery at the manufacturer's location: Hughes Fire Equipment \$394,251.00 per truck for a total of \$788,502.00 for two trucks; Montana Fire Works \$429,620.40 per truck for a total of \$859,240.80 and Sutphen Corporation \$373,476.96 per truck for a total \$746,953.92 for two trucks.

ALTERNATIVES ANALYZED:

FINANCIAL IMPACT: The FY2007 Capital Replacement Fund contains the budget for replacement of the Fire Department's existing 1991 E-One Fire Truck (Unit #4090)

The second fire apparatus is being purchased with funding approved from the 2004 Public Safety Levy. A total of \$460,000 was approved for the purchase of the truck and miscellaneous equipment that will be housed at Fire Station #7.

The proposal from Sutphen Corporation included a payment option where by the City could earn 6.5% on any pre-payment over and above the one-quarter down payment required at contract signing. The City of Billings average investment interest rate as of June 30, 2006 was 4.16%. If we were to take advantage of this offer and establish a payment plan of 60% down at contract signing; 25% at mid-construction and the balance upon completion would reduce the final cost of these trucks by approximately \$9,000.

RECOMMENDATION

Staff recommendation is to accept the proposal from Sutphen Corporation, take delivery of the trucks direct from the manufacturer and take advantage of the 60% pre-payment option.

Approved By: **City Administrator** **City Attorney**

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B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 27, 2006

TITLE: Modification to Law Enforcement Personnel Reimbursable Agreement with the Transportation Security Administration (TSA)

DEPARTMENT: Aviation and Transit

PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: On January 12, 2004, Council approved an Agreement with the Transportation Security Administration (TSA) for the reimbursement of the labor costs associated with providing law enforcement coverage at the TSA's security screening area. The Agreement included annual 3% adjustments to the hourly rate used for the reimbursable amount through Federal Fiscal Year 2007, ending September 30, 2007. Airport staff was recently notified that the TSA, due to budget constraints, was willing to continue with the final year of the Agreement reimbursing the City for the services of the Airport Police Officers, but at the same rate as last fiscal year, with no 3% increase. Historically, the actual amount that the City's Airport has been reimbursed during the previous three (3) years has never reached the maximum allowed, and would not during the next fiscal year even using the TSA Agreement's maximum amount from last year. Subsequently, the Modification to the Law Enforcement Personnel Reimbursable Agreement would be negligible to the City, but is still required by the TSA to ensure continuation of the monthly reimbursements.

FINANCIAL IMPACT: Accepting the proposed Modification to the Law Enforcement Personnel Reimbursable Agreement will allow the City's Airport to continue to receive approximately \$160,000 of reimbursable revenue for the period beginning October 1, 2006, through September 30, 2007.

RECOMMENDATION

Staff recommends that Council approve the Modification to Law Enforcement Personnel Reimbursable Agreement with the Transportation Security Administration.

Approved By: **City Administrator** **City Attorney**

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C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 27, 2006

TITLE: LED Traffic Signal Project Incentive Agreement

DEPARTMENT: Public Works Department

PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Replace existing traffic signal incandescent fixtures with LED fixtures by participating in Northwestern Energy's E+ Business Partners program. This program offers funding for local energy conservation and load management projects in new/retrofit applications. The subject traffic signal replacement project has been approved by Northwestern Energy as an eligible project under this program. The program will reimburse the City approximately \$45,000 when the project is completed by November of 2008.

City staff has identified 102 red signals, 768 pedestrian crossing signals, and 129 clamshells for LED fixtures that can be converted. Replacement of these fixtures has been programmed into the Street and Traffic CIP with a seven year replacement schedule. Under this program the replacement schedule would be completed in two years.

Replacement to LED fixtures will reduce electrical energy costs and reduce the bulb replacement schedule from approximately once every two years to once every ten years. The E+ Business Partners program might not be available to the City in the future due to competing projects and funding.

ALTERNATIVES ANALYZED: Replace the traffic signals on a normal replacement schedule without participation in Northwestern Energy's E+ Business Partners program.

FINANCIAL IMPACT: Accelerate the traffic signal replacement program to two years at an estimated initial cost of \$145,000 with a reimbursement of approximately \$45,000 from Northwestern Energy in November of 2008.

RECOMMENDATION

Staff recommends that Council approve the LED Traffic Signal Project Incentive Agreement with Northwestern Energy.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS - Project Incentive Agreement

PROJECT INCENTIVE AGREEMENT

Agreement # _____

This **Agreement** is made this _____ day of _____ 2006 by and between **NorthWestern Corporation, a Delaware corporation d/b/a NorthWestern Energy (NWE)** with offices at 40 East Broadway, Butte, Montana, 59701-9394 and _____, (hereinafter Customer) of _____.

NorthWestern Energy makes available energy efficiency incentives to eligible NorthWestern Energy customers who implement electric energy efficiency and/or load management measures in their facility.

This Agreement documents in the Technical Specifications, attached as Exhibit A, the electric energy efficiency and/or load management measures to be implemented at the Customer facility. Customer understands and agrees that execution of this Agreement may impact eligibility for participation in any other existing or future NWE incentive program(s) and, specifically, Customer will not qualify for any additional NWE energy efficiency incentives for those measure identified in Exhibit A of this Agreement.

The Customer is an existing customer of NWE, electric account number(s) _____ at _____ (the Facility).

1. **Agreement Execution:** This agreement must be executed by the customer and submitted to NWE on or before _____ or the parties hereto will be required to renegotiate the terms and conditions stated herein.
2. **Required Completion Date:** The electric energy efficiency and/or load management measures documented in the Technical Specifications, attached as Exhibit A (hereinafter "Project"), shall be completed and fully operational by _____. The Customer shall provide NWE with written notification stating the Project is complete and fully operational on or before the required completion date. If the Project will not be complete on or before the required completion date the Customer shall notify NWE in writing. If the Customer does not meet the Project completion date, then at NWE's election, (a) the parties hereto may be required to renegotiate the terms and conditions stated herein or (b) for each thirty(30) calendar days Customer remains delinquent, NWE may elect to reduce the total incentive payment by ten percent (10%).
3. **Payment:** Within 45 days of NWE's receipt of written notice from Customer that the Project is complete, NWE at its discretion may inspect the Project to ensure it is complete, fully functional and meets the Technical Specifications set forth in Exhibit A. NWE shall pay to Customer an incentive payment in the amount of \$ _____ (and no/100 Dollars) within thirty (30) days from NWE's inspection and approval that the Project is complete, fully functional, and meets the Technical Specifications. This incentive represents NWE's full payment and obligation under this Agreement.

4. Installation and Ownership: The Customer shall contract with firm(s) to perform the services required to procure and implement the Project (“Customer’s Contractors”). The Customer shall be responsible for hiring Contractors with the expertise necessary to implement the approved design plans outlined in Exhibit A. All equipment installed shall be the property of the Customer who is solely responsible for the proper operation and maintenance of all such equipment. Customer is solely responsible for obtaining all necessary and required governmental and third party consents and permits, meeting applicable code requirements, proper disposal of waste material, determining the adequacy of the installation, and paying contractors and/or suppliers.

5. Liability: The Customer agrees that NWE shall have no responsibility whatsoever with respect to workmanship or materials provided by the contractor(s), and that NWE shall have no responsibility for any warranties or guarantees provided by the contractor(s). The Customer understands and agrees that although NWE may inspect the application, NWE shall have no liability whatsoever as a result of such inspection.

The Customer agrees to indemnify, defend and save harmless NWE, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever, brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, resulting from or occurring in connection with the performance of the work herein specified.

The Customer shall independently evaluate any advice or direction given by NWE related to estimates of electric savings or the cost, selection or installation of the electric conservation and/or load management measures. In no event will NWE be liable for the failure of Customer to achieve a specified amount of energy savings, the operation of Customer’s facility, or any incidental or consequential damages of any kind in connection with this Agreement or the installation of energy conservation and/or load management measures, and in no event shall NWE liability exceed any obligation to pay the incentive for which Customer is eligible under this agreement.

6. Correspondence: The Customer shall transmit all correspondence to the individual identified below who shall be designated as the NWE Representative.

NorthWestern Energy
40 East Broadway
Butte, MT 59701-9394
Attn: **David Bausch**

All correspondence by Customer shall reference:
Agreement # _____

7. Termination: NWE shall have the right to terminate this Agreement should NWE determine that the Customer is not performing any of its obligations under this Agreement. If NWE so terminates this Agreement, then NWE shall not be liable for any further incentive payment to the Customer whatsoever, and the Customer shall be liable for any costs to NWE

resulting from the termination. NWE's rights herein are in addition to any other remedies it may have under the law.

In such event, NWE shall first give Customer written notice of its intent to terminate. Said notice shall state the basis for such termination and allow the Customer ten (10) working days to either effect a cure or propose a corrective plan satisfactory to NWE.

8. Force Majeure: If either party is prevented in whole or in part from performing its obligations under this Agreement by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is affected by such cause, to the extent the performance is actually affected; provided that such party provides written notice to the other party of such condition within five (5) calendar days from the onset of such condition.

9. Assignment: It is expressly agreed that Customer shall not assign this Agreement in whole or in part without the prior written consent of NWE.

10. Third Party Not To Benefit: This Agreement is not intended for the benefit of any person other than NWE and the Customer and shall not confer or be deemed to confer upon any other such person (including, but not limited to the contractor and subcontractors performing conservation work for the owner) any benefits or rights or remedies hereunder.

11. Authority: The Customer represents that it has obtained any written or oral permission necessary for Customer to make alterations, additions, or capital improvements to the premises where the contract work will be performed.

12. Toxic Material: NWE shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials of any kind in connection with Customer's Facility, including without limitation, asbestos, asbestos products, PCB's, or other toxic substances.

13. Applicable Law; Attorney's Fees: This Agreement shall be governed in all respects by the laws of the State of Montana. All actions or proceedings seeking enforcement of this Agreement may be brought against either of the parties in the courts of the State of Montana, County of Butte-Silver Bow. If litigation is commenced by either party to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorney's fees through trial and appeal.

14. Entire Agreement/Modification: This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and unless otherwise provided in this Agreement, no modification or waiver of any of the provisions, or any future representation, promise, or addition, shall be binding upon the parties unless made in writing and signed by both parties.

Each party represents that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement, understands it, and agrees to be bound by it.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in **duplicate the day and year first** above written.

NorthWestern Corporation d/b/a

NorthWestern Energy

(NWE)

(Customer)

By _____

By _____

Title _____

Title _____

Date _____

Date _____

Taxpayer Identification Number: _____

Exhibit A
to the
Incentive Agreement Between

NorthWestern Energy

and

Agreement #_____

Technical Specifications
(__ Pages Attached)

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 27, 2006

TITLE: Development Agreement with Rocky Mountain Community Church, owner of Certificate of Survey 1011, Amended Tract B-1

DEPARTMENT: Public Works/Engineering

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: City Council approved the annexation of Certificate of Survey 1011, Amended Tract B-1 at the June 26, 2006, council meeting. As a condition of approval of the annexation, the property was to enter into a development agreement with the City of Billings outlining necessary public improvements. Rocky Mountain Community Church has submitted the attached Development Agreement, and the council will consider whether to approve it.

ALTERNATIVES ANALYZED:

1. Approve development agreement with Rocky Mountain Community Church for Certificate of Survey 1011, Amended Tract B-1.
2. Do not approve development agreement with Rocky Mountain Community Church for Certificate of Survey 1011, Amended Tract B-1.

FINANCIAL IMPACT: There is no financial impact to the City with this development agreement.

RECOMMENDATION

Staff recommends that Council approve the development agreement with Rocky Mountain Community Church for Certificate of Survey 1011, Amended Tract B-1.

Approved By: **City Administrator** **City Attorney**

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, November 27, 2006**

TITLE: City of Billings/Yellowstone County Agreement to provide Law Enforcement Data Processing Services for the period July 1, 2006 through June 30, 2007

DEPARTMENT: Administrative Services – Information Technology Division

PRESENTED BY: David Watterson, Information Technology Manager

PROBLEM/ISSUE STATEMENT:

Approve the annual Data Processing Agreement between the City of Billings and the Yellowstone County Sheriff's Department. The City of Billings has contracted with Yellowstone County for the past several years to provide the Sheriff's Department with New World Public Safety access, disk storage, computer processing, program maintenance and operations to support their existing data processing requirements in exchange for a charge based on the actual cost of resources used during the prior fiscal year. This is an annual agreement.

FINANCIAL IMPACT:

The annual charge for July 1, 2006 through June 30, 2007 is \$83,970.00. The annual charge for the prior year was \$78,562.00. The increase of \$5,408.00 is due to the increased usage of the Public Safety Systems.

RECOMMENDATION

Staff recommends that Council approve the agreement to provide data processing services for the Yellowstone County Sheriff's Department in the amount of \$83,970.00.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, November 27, 2006**

TITLE: Approval for a Five-Year Term Contract for Architectural Services with CTA Architects and Engineers

DEPARTMENT: Aviation and Transit

PRESENTED BY: Thomas H. Binford, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Every five years the Department of Aviation and Transit enters into a contract with a registered professional architectural firm to provide the necessary architectural services for all Federally funded Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) projects, as well as the other general architectural services needed to design and administrate the annual construction work for the Department. Staff developed a Request for Proposals for these services for the next five-year term, and distributed this request to local area architectural firms that have expressed interest in providing architectural services to the City of Billings. This Request for Proposals was also advertised in the *Billings Times*, and on the City's Web page.

Proposals were received from A&E Architects, Bauer Group Architects, Collaborative Design Architects, and CTA Architects and Engineers. A selection committee, comprised of Vince Ruegamer, City Council Member, Dick Larsen, Airport Commission Member, and City of Billings staff members, evaluated these proposals. This committee unanimously selected the proposal from CTA Architects to be brought forward for approval. Important information in the attached Contract includes:

- **Term:** Five years from date of acceptance.
- **Scope of Services:** Preliminary design, cost estimating, plan and specification preparation and review, construction administration, and closeout.
- **Total hourly involvement** will be negotiated and approved by staff for each project.
- **Indemnification/Insurance:** Coverage approved by the City Attorney's office.

Examples of the types of projects that CTA Architects will be working on during the years following approval of this Contract include:

- Security and Access Control Projects.

- Demolition of the old Air Traffic Control Tower.
- ADA Compliance Projects.
- Mechanical and Electrical Upgrades.

FINANCIAL IMPACT: This base Contract will be amended each time a project is undertaken. The fees associated with each project are negotiated with staff and approved by the Federal Aviation Administration. Over the last five-year term, architectural fees totaled \$912,602, which covered \$6,381,665 in construction projects and studies. Staff anticipates a similar experience over the next five years. As in the past, the majority of the costs will be funded with Airport Improvement Program grants or Passenger Facility Charge funds.

RECOMMENDATION

Staff recommends that Council approve the award of the Five-Year Term Contract for Architectural Services for the selected architectural firm CTA Architects and Engineers.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT: Agreement

AGREEMENT FOR PROFESSIONAL ARCHITECTURAL SERVICES

CITY OF BILLINGS AVIATION AND TRANSIT DEPARTMENT

This Professional Architectural Services Agreement made and entered into this _____
day of _____ 20____ by and between the following:

THE CITY OF BILLINGS, a Montana municipal corporation,
Billings, Montana (hereinafter called the City),

and

(hereinafter called Architect).

W I T N E S S E T H

WHEREAS, the City is the owner and operator of Billings Logan International Airport and MET Transit Service (hereafter the Aviation and Transit Department) and appurtenances thereon, and

WHEREAS, the City has need for an architectural consultant and has authority to contract for such services, and

WHEREAS, Architect is willing to perform architectural services for the Aviation and Transit Department under terms and conditions specified and contained herein, and

WHEREAS, the Architect represents that he/she is qualified to perform such services and is in compliance with the Montana Statutes relating to the registrations and licensing of professional architects.

NOW, THEREFORE, the parties hereto covenant, and agree as follows:

ARTICLE I

TERM

The City does hereby enter into the Agreement with the Architect who will perform architectural services as set forth herein for the Aviation and Transit Department. The term of this Agreement is for a period of five (5) years beginning _____, 20____ and terminating on _____, 20____.

ARTICLE II

SCOPE OF SERVICES

A. GENERAL. The City hereby employs the Architect to provide Architectural Services as needed for the Airport Improvement Program (AIP), Passenger Facility Charge Program (PFC), Federal Transit Authority (FTA) funded projects, and General Departmental Architectural services. The Architect shall provide the Aviation and Transit Department design and contract administration for building design and construction, building remodels, electrical systems, mechanical systems, plumbing systems, fencing, airfield security systems, building site development, and associated bidding and grant reimbursement requests. Construction Project work described herein shall hereinafter be referred to as the Project.

B. STANDARDS OF PERFORMANCE

1. The standard of care for all professional architectural and related services performed or furnished by Architect under this Agreement will be the care and skill ordinarily used by members of Architect's profession practicing under similar circumstances at the same time and in the same locality. Architect makes no warranties, express or implied, under this Agreement or otherwise, in connection with Architect's service.

2. Architect shall be responsible for the technical accuracy of its services and documents resulting therefrom, and City shall not be responsible for discovering deficiencies therein. Architect shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in City furnished information.

C. DETAILS OF ARCHITECTURAL SERVICES. The following services shall be provided as required by the City and the specific type of project and funding.

1. Phase I – Design Plans and Specifications.

This phase will include building design surveys, plans and specifications for the individual work items identified by the City of Billings Aviation and Transit Department. After a project is defined by a scope of work, costs will be negotiated and an Amendment to this Agreement will be prepared for approval by the City.

a. Prepare construction plans and specifications including Invitation to Bid and other Contract Documents for bid openings.

b. For bidding, provide up to fifty (50) sets of plans and specifications to supply Contractors requesting plans for bidding purposes; furnish the City with three (3) sets of plans and specifications for the files; and furnish five (5) sets for use by the Contractor during construction.

c. Specify reasonable construction periods for the proposed work in the specifications and Contract Documents and provide for payment of liquidated damages to the City by the Contractors if the Contractors fail to complete the work within the Contract times stipulated in the Contract Documents.

d. Prepare the final cost estimates based on the final plans and specifications for use as a guide in considering the bids received for each Project.

e. All information relating to the Project and prepared under the terms of this Agreement, and in accordance to the latest Federal Aviation Administration (FAA) Requirements including schedules, reports, data, recommendations, exhibits, analysis, plans, and specifications, shall be deemed the property of the City. Reproducible copies of all notes, reports, plans, and specifications shall be made available at the City's request.

2. Phase II – Construction Phase.

This phase will provide a Project Architect and Construction Observers, agreeable to the City, as representatives of the City, to visually observe that the construction work is completed within the guidelines of the construction documents. Also, provided will be the construction quality control for materials used in the construction work.

a. Construction Administration, Observation, Testing, and Project Closeout. After award of the Construction Contract(s), the Architect shall:

1) Provide a Project Architect and Observers during construction agreeable to the City.

2) Attend preconstruction conferences, City Council Meetings, and meetings with the FAA as required to update project progress.

3) Consult with the City and act as City's representative throughout the construction of the Project. All of City's instructions to Contractor(s) will be issued through Architect who will have authority to act on behalf of City on regular routine matters. If decisions must be made which may vary or affect the construction Contract(s), Architect shall consult with City.

4) In addition to providing observations as specified under Subsection 10 below, the Architect shall make regular visits to the site at intervals appropriate to the various stages of any type of construction to observe, as an experienced and qualified design professional, the progress and quality of the executed work of Contractor(s) and to determine if such work is proceeding in accordance with the Contract Documents.

Architect shall not be responsible for the means, methods, techniques, sequences, or procedures of construction and programs incident to the work of Contractor(s). Architect's efforts will be directed toward providing a significant degree of confidence for the City that the completed work of Contractor(s) will conform to the Contract

Documents, but Architect shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observation, Architect shall keep City informed of the progress of the work, shall work diligently to guard City against defects and deficiencies in such work, and shall recommend that the City disapprove or reject work failing to conform to the Contract Documents. The Architect will be responsible to inform the City of any deviation of the contractor from the Airport Operations plan in the contract documents.

5) Review and take other appropriate action with respect to shop drawings and samples, the results of tests and inspections and other data which the Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction, or to safety precautions and programs incidental thereto).

6) Issue all instructions of City to Contractor(s) in a timely manner; issue necessary interpretations and clarifications of the Contract Documents and in connection therewith, prepare change orders as required; have authority, as City's representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge the acceptability of the work thereunder, and recommend to City that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Architect believes that such work will not produce a complete Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

7) Based on Architect's on-site observations as an

experienced and qualified design professional, determine the amounts owing to Contractor(s) and recommend to the City, in writing, payments to Contractor(s). Such recommendations for payment will constitute a representation to the City, based on such observations and review; that the work has progressed to the point indicated; that, to the best of the Architect's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in the Architect's recommendation to the City); and that payment of the amount recommended is payable to the Contractor(s). However, by recommending any payment, Architect will not thereby be deemed to have made an examination to ascertain how or for what purposes any Contractor has used the monies paid to him as provided herein.

8) Conduct a semi-final inspection to determine if the Project is substantially complete and a final to determine if the work has been completed in accordance with the Contract Documents, and if each Contractor has fulfilled his/her obligations thereunder so that Architect may recommend, in writing, final payment to Contractor(s) and may give written notice to City and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in Paragraph 7 above.

9) Architect shall not be responsible for the acts or omissions of Contractor(s), or subcontractor(s), or any of the Contractor(s) or subcontractor(s) agents or employees or any other entity or persons (except Architect's own employees and agents) at the site or otherwise performing or furnishing any of the work. Architect shall not be responsible for failure of any Contractor to perform or furnish the work

in accordance with the Contract Documents.

10) A Project Representative shall be provided to act as the representative of the Architect during construction. Observers shall provide observation of Contractors' work. The qualifications of the Observers proposed for this work shall be provided to the FAA and City for their review and approval prior to assignment of the individual(s) so selected to the Project.

11) Prepare Record Drawings and furnish the City one (1) CD of all Record Drawings and three (3) sets of Record Drawings. Record Drawings are due within sixty (60) days of the Contractor's final payment and before final payment to the Architect.

12) Name a Task Director who shall be the liaison between the City and the Architect. For this Agreement, the Task Director designated is _____ . The named can only be changed by written permission of the City.

13) Closeout Report document shall be as per the latest FAA Requirement.

b. Special Requirements.

1) Disadvantaged Business Enterprises (DBE) Compliance. The Architect will pursue his/her own compliance and work with the City to gain Contractor's compliance with the small, minority and women's business enterprise requirements as defined in 49 CFR 26 and as stated in the City of Billings DBE Plan as approved by the DOT-FAA. The Architect shall include a list of qualified minority and women's businesses on solicitations, and consider the division of architectural and construction work into tasks small enough to provide an opportunity for DBE participation. Further, the Architect shall contact the Office of Civil Rights, FAA and the Civil Rights Unit, and the DBE Program Manager of the Montana Department of Civil Rights for a list of potential DBE firms.

2)

Compliance with

Airport Rules and Regulations. The Architect and his/her architectural staff shall comply with all Airport Rules and Regulations and inform the Contractor's personnel of applicable Airport Rules and Regulations. Special attention will be given to the proper marking of vehicles, identification of personnel, and possessing an awareness of the necessity to strictly adhere to airfield regulations, and security programs, to prevent conflict with on-going aircraft operations for a safe airfield environment.

3) Jobsite Safety. Neither the professional activities of the Architect, nor the presence of the Architect or the Architect's employees and subconsultants at the construction site, shall relieve the Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work or construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Architect's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. Architect shall notify the Aviation and Transit Department of Contractors failure to perform the contracted construction in a safe, prudent, and timely manner.

3. Extra Services.

In the event that some elements of a Project require a type of architectural service not identified under Article II, C. 1. and C. 2., as discussed above, the Architect shall secure the services of competent professional and technical personnel to provide such special services. The scope and remuneration for such special services shall be negotiated and included as a cost item in the Amendment to this Agreement before such special services are performed.

ARTICLE III
OBLIGATIONS

Architect will provide timely architectural services for the City of Billings

Aviation and Transit Department and the City will in turn afford a reasonable time for the Architect to complete their work. Both parties will respond promptly to requests for information.

ARTICLE IV

FEES AND CHARGES

Architect will be reimbursed for all architectural services based on the hourly rates set forth in Exhibit A and by said reference made a part of this Agreement. The maximum number of hours devoted to any specific project will be decided upon and mutually agreed upon with the Director of Aviation and Transit or his duly appointed representative, in writing, prior to the start of the project. The hourly rates will include all costs associated with the architectural services except reimbursable travel, printing, and other direct costs associated with a specific project and authorized by the Director of Aviation and Transit, which will be reimbursed separately.

The work will be divided into separate projects by the City, and these projects will be accounted for separately by the Architect, who will bill monthly for work performed.

The City will make monthly payments in proportion to the work performed.

ARTICLE V

MISCELLANEOUS

A. ACCESS TO ARCHITECT'S RECORDS. The City, the FAA, the FTA and the Comptroller General of the United States shall have access to any books, documents, papers and records of the Architect, which are directly pertinent to the grant and PFC programs for the purpose of making audit, examination, excerpts and transcriptions. All reports shall be maintained for three (3) years after final payment and/or project closeout, whichever is later.

1. Equal Employment Opportunity. The Architect has formulated, adopted, and actively maintains an affirmative action plan in compliance with Executive Order No. 11246 entitled, "Equal Employment Opportunity." The Architect does not discriminate on the basis of race, color, religion, creed, national origin, sex or age. Goals and targets are specified in the affirmative action plan to assure its implementation.

2. Conformance with Federal, State, and Local Laws, Rules, and Regulations. All services performed shall be in conformance with any and all applicable Federal, State, and Local laws, rules, and regulations.

3. Affirmative Action Program. The Architect assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Architect assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Architect assures that it will require that its covered suborganizations provide assurance to the City that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

B. INDEMNIFICATION. The Architect shall indemnify, hold harmless, and defend the City against all liabilities, claims, penalties, forfeitures, and lawsuits, which the City may incur, become responsible for or pay out as a result of death or bodily injury to any person, destruction of or damage to any property, contamination of or adverse effect on environment or any violation of governmental laws, regulations or orders, to the extent that such damage was caused by:

1. Architect's breach of the Agreement; or
2. Any errors or omissions of the Architect's, its agents, employees, or both, in performing the work required.

C. INSURANCE. The Architect shall maintain in good standing the insurance described herein. Before rendering any services under this Agreement, the Architect shall furnish the City with proof of insurance in accordance with this Agreement, and specifically items 1-8 below. The Architect will provide the following insurance:

1. Workers Compensation Insurance
 - a. Coverage A, Statutory Limits

- b. Coverage B, \$1,500,000
- 2. Commercial General Liability Insurance
 - a. \$1,500,000 Per Occurrence
 - b. \$3,000,000 Annual Aggregate
 - c. \$3,000,000 Products and Completed Operations Aggregate
 - d. City of Billings as a PRIMARY ADDITIONAL INSURED
 - e. Waiver of Subrogation in Favor of the City of Billings
- 3. Commercial Automobile Liability Insurance
 - a. \$1,500,000 Per Occurrence
 - b. Owned, Hired, Non Owned Vehicle Liability
- 4. Professional Liability Insurance
 - a. \$1,500,000 Each Claim – \$3,000,000 Annual Aggregate
- 5. Each policy of insurance required by this section shall provide for no less than forty-five (45) days of advance written notice to the City of Billings prior to cancellation or termination by any party.
- 6. The City of Billings will be listed as a PRIMARY ADDITIONAL INSURED on all policies except Professional Liability and Workers Compensation Insurance. The Architect's General Liability Insurance policy will be endorsed to be Primary and Noncontributory with all policies maintained by the City of Billings.
- 7. A waiver of subrogation in favor of the City of Billings will be endorsed on all policies maintained by the Architect except for Workers Compensation Insurance and Professional Liability Insurance.
- 8. All insurance requirements may be satisfied with a primary policy or a combination of primary and excess or umbrella policies.

D. TERMINATION. This Agreement shall terminate at the end of the full term

hereof without any notice by either party. A holding over by the Architect, beyond the expiration of the term shall not be permitted without the written consent of the Director of Aviation and Transit. Provided, however, that:

1. The Sponsor may, by written notice, terminate this Agreement in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the Agreement obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the Sponsor.
2. If the termination is for the convenience of the Sponsor, an equitable adjustment in the Agreement price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the Contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the Agreement price shall be made as provided in Paragraph 2 of this clause.
5. The rights and remedies of the Sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

E. TRANSITIONAL SERVICE OBLIGATIONS OF ARCHITECT UPON EXPIRATION OR TERMINATION. In the event this Agreement is terminated with or without cause, or expires by its terms, and a successor vendor is selected by the City or if either party fails to renew this Agreement, the Architect will continue to provide full and complete services under this Agreement until new services are implemented by its successor, by the City or any third party designated by the City. Architect's obligation to provide all services in any such transition shall continue for a maximum of one hundred twenty (120)

days after the effective date of termination or expiration of the Agreement, or for a lesser time as determined by the City. Architect will cooperate fully in assuring the City maintains uninterrupted service during such a transition.

During such transition, the method of providing service to the City will not be modified or personnel relocated or removed on Architect's own initiative, without the City's prior written consent.

Architect will, upon request, release and transfer all City data, without cost or fees to any designated successor vendor selected by the City, to the City, or any third party the City designates, in a format as it appears on Architect's systems, provided that the City has paid all undisputed amounts invoiced by Architect to the City for services rendered per this Agreement.

In the event of transfer of volume to another vendor, to the City, or a City designated third party, the Architect will not charge fees or costs to the City for equipment de-installation, un-expired leasehold obligations, employee severance, management time, knowledge transfer, or any other costs incurred due to or during such transfer.

F. ATTORNEY'S FEES. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay the prevailing party all reasonable costs, damages, expenses, and attorneys fees, including fees for in-house attorneys, expended or incurred in connection therewith.

G. SUBORDINATION OF AGREEMENT. This Agreement is subordinate to the provisions of any existing or future agreements between the City and the United States relative to the administration, operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

H. FORCE MAJEURE. Neither party will be responsible for any failure or delay in performance of this Agreement if the failure or delay is due to an event beyond the

reasonable control and without the fault or negligence of the party seeking to excuse performance, including, without limitation, acts of God, war, labor disputes and strikes, fire, flood, riot, unforeseen delays in third-party provided transportation or communications. Any party seeking to excuse or delay performance under this Article V, I. will provide detailed written notice to the other party of the nature and anticipated duration of the delay.

I. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of Montana, without reference to choice of law, rules or principles.

J. INDEPENDENT CONTRACTOR. Architect's relationship with the City under this Agreement shall be that of an independent contractor. Architect is to exercise its own discretion on the method and manner of performing its duties and the City will not exercise control over Architect or its employees except insofar as may be reasonably necessary to ensure performance and compliance with this Agreement. The employees, methods, and equipment used by Architect shall at all times be under Architect's exclusive direction and control. Nothing in this Agreement shall be construed to designate Architect, or any of its employees, as employees, agents, joint ventures or partners of the City. Architect is wholly responsible for withholding and payment of all Federal, State and Local income and other payroll taxes with respect to its employees, including contributions from them as required by law.

K. SEVERABILITY – WAIVER. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

L. ENTIRETY. This Agreement and its Exhibit(s) are the entire understanding and agreement between the parties with respect to the subject matter covered, and all prior agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied, not incorporated in this Agreement are superseded.

M. AMENDMENT. Any modifications or amendments to this Agreement must be in writing and executed by the parties hereto.

N. ASSIGNMENT. Neither party may assign or transfer this Agreement or any part hereof without the express written consent of the other party, which consent shall not be unreasonably withheld, except that the City may, without the consent of Architect assign its rights and obligations under this Agreement to any successor of all or substantially all of its assets whether by merger, asset acquisition, stock purchase or otherwise.

O. PUBLICITY. Architect agrees that it will not, without the written consent of the City in each instance:

1. Use in advertising, publicity, or otherwise the name of the City, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the City.

2. Represent, directly or indirectly, that any product or any service provided by Architect has been approved or endorsed by the City. City and Architect, upon agreement, may engage in joint marketing efforts including, without limitation, joint publications and presentations regarding the services provided by Architect. The City has the right to submit scientific articles for publication and present papers and lectures regarding the services.

P. FEDERAL CONTRACT PROVISIONS. The receipt of Federal grant funding through the FAA Airport Improvement Program (AIP) requires the City to incorporate certain language, requirements, and/or laws in all contracts that will be funded with the use of AIP funds. Said language, requirements, and/or laws are as follows:

1. Civil Rights Act of 1964, Title VI – Contractor Contractual Requirements.

During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

a. Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter DOT) Title 49,

Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination. The Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the

Sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- 1) Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or
- 2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

f. Incorporation of Provisions. The Contractor shall include the provisions of Paragraphs P. 1. a. through P. 1. e. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Sponsor to enter into such litigation to protect the interests of the Sponsor and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Airport and Airway Improvement Act of 1982, Section 520 – General Civil Rights Provisions. The Contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the contractor or subcontractors or its transferee for the period during which Federal assistance is extended to the airport or program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods:

- a. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits, or
- b. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

In the case of Contractors, this provision binds the Contractors from the bid solicitation period through the completion of the Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

3. Disadvantaged Business Enterprises.

- a. Contract Assurance (§26.13). The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate.

- b. Prompt Payment (§26.29). The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime Contractor receives from the City. The prime Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

4. Lobbying and Influencing Federal Employees.

- a. No Federal appropriated funds shall be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or

employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

5. Rights to Inventions. All rights to inventions and materials generated under this Agreement are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this Agreement is executed.

6. Trade Restriction Clause. The Contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

a. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR).

b. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list.

c. Has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the FAA may direct through the

Sponsor cancellation of the contract at no cost to the Government.

Further, the Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The Contractor shall provide immediate written notice to the Sponsor if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the FAA may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

7. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. The bidder/offeror certifies, by submission of this proposal or acceptance of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from

participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

Q. **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement or the particular paragraphs.

R. NOTICES. Notices to the City provided for herein shall be sufficient if sent by Certified Mail, postage prepaid, addressed to:

Director of Aviation and Transit
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings, Montana 59105

and notices to the Architect, if sent by Certified Mail, postage prepaid, addressed to:

Or to such other addresses as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day
of 2006.

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

BY _____
CITY ATTORNEY

BY _____
ARCHITECT

EXHIBIT A

YEAR SALARY ESCALATION	2006	2007	2008	2009	2010	2011
POSITION	RATE	RATE	RATE	RATE	RATE	RATE
Project Director/PIC	\$ 150	\$ 155	\$ 160	\$ 166	\$ 172	\$ 178
Project Manager - Architect	\$ 95	\$ 98	\$ 102	\$ 105	\$ 109	\$ 113
Project Manager - Site Planner	\$ 113	\$ 117	\$ 121	\$ 125	\$ 129	\$ 134
Roofing Systems Specialist	\$ 91	\$ 94	\$ 98	\$ 101	\$ 105	\$ 108
Building Codes Specialist	\$ 105	\$ 108	\$ 112	\$ 116	\$ 120	\$ 124
Designer/Principal	\$ 150	\$ 155	\$ 160	\$ 166	\$ 172	\$ 178
Senior Designer	\$ 110	\$ 114	\$ 118	\$ 122	\$ 126	\$ 130
Designer	\$ 59	\$ 61	\$ 63	\$ 66	\$ 68	\$ 70
LEED Accredited Professional	\$ 76	\$ 79	\$ 81	\$ 84	\$ 87	\$ 90
Cost Consulting/VE	\$ 76	\$ 79	\$ 81	\$ 84	\$ 87	\$ 90
Architect	\$ 70	\$ 72	\$ 75	\$ 78	\$ 80	\$ 83
Architectural Production	\$ 58	\$ 60	\$ 62	\$ 64	\$ 66	\$ 69
Senior Landscape Architect	\$ 82	\$ 85	\$ 88	\$ 91	\$ 94	\$ 97
Landscape Architect	\$ 70	\$ 73	\$ 75	\$ 78	\$ 81	\$ 83
Landscape Production	\$ 46	\$ 47	\$ 49	\$ 51	\$ 52	\$ 54
Interior Designer	\$ 65	\$ 67	\$ 69	\$ 72	\$ 74	\$ 77
Engineer - Civil/Principal	\$ 118	\$ 122	\$ 127	\$ 131	\$ 136	\$ 140
Engineer - Senior Civil	\$ 89	\$ 92	\$ 95	\$ 99	\$ 102	\$ 106
Engineer - Civil	\$ 78	\$ 80	\$ 83	\$ 86	\$ 89	\$ 92
Engineer - Senior Structural	\$ 110	\$ 114	\$ 118	\$ 122	\$ 126	\$ 131
Engineer- Structural	\$ 80	\$ 83	\$ 86	\$ 89	\$ 92	\$ 96
Engineer - Senior Electrical	\$ 110	\$ 114	\$ 118	\$ 122	\$ 126	\$ 130
Engineer - Electrical	\$ 80	\$ 83	\$ 86	\$ 89	\$ 92	\$ 96
Engineer - Telecommunications	\$ 97	\$ 100	\$ 103	\$ 107	\$ 111	\$ 115
Engineer - Senior Mechanical	\$ 110	\$ 114	\$ 118	\$ 122	\$ 126	\$ 130
Engineer - Mechanical	\$ 80	\$ 83	\$ 86	\$ 89	\$ 92	\$ 96
Engineer - Fire Protection	\$ 108	\$ 112	\$ 115	\$ 120	\$ 124	\$ 128
Engineering Technical/Designer	\$ 65	\$ 67	\$ 69	\$ 72	\$ 74	\$ 77
Senior CADD Technician	\$ 60	\$ 62	\$ 64	\$ 67	\$ 69	\$ 71
CADD/Drafting Technician	\$ 50	\$ 52	\$ 54	\$ 56	\$ 58	\$ 60
Word Processing	\$ 47	\$ 49	\$ 50	\$ 52	\$ 54	\$ 56
Graphics	\$ 65	\$ 68	\$ 70	\$ 73	\$ 75	\$ 78
Consultants	Cost + 5%					
Reimbursable Expenses	At Cost					

The above stated billing rates include base salary plus allowance for benefits, overhead, professional liability insurance and profit.

Consultants would be negotiated on an as needed basis, depending upon project scope.



[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Safe Route to School Program Application for Chandelier Circle Connection to the Big Ditch Trail

DEPARTMENT: Planning and Community Services Department, Candi Beaudry, AICP, Interim Planning Director

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is seeking grant monies to provide a connection from the Big Ditch Trail that has been recently built along Rush Subdivision, across the Big Ditch and through the easement provided to the cul-de-sac on Chandelier Circle in the Shiloh Point Subdivision.

The City Council made this connection an initiative at it's October 23rd meeting and asked that we make it part of the Big Ditch Trail phase 2 project, but to also continue to pursue other funding sources.

ALTERNATIVES ANALYZED: If we do not submit a program application for the Safe Routes to School Program, the City could still build this connection with the CTEP funds from the Big Ditch Trail Project, Phase 2, but this would shorten the length of the main trail to the west so it might not reach 46th St. W. or provide a link to the Rimrock West Park playground. The other alternative is to seek private funding for the Chandelier Circle Connection.

FINANCIAL IMPACT: It is estimated that the Chandelier Circle connection with the ditch crossing will cost approximately \$25,000. A crossing agreement with the Big Ditch Company and the City of Billings is already in place. The Safe Routes To School program is a Federally funded reimbursement program that does not require a local match, but has numerous criteria that need to be fulfilled. There is no financial impact to the City of Billings for construction if we are able to secure this grant. However, as part of the grant application, the City is required to send a letter of intention committing to maintenance of the facility. The newly constructed Big Ditch Trail and side trail connections are included in the park and landscape areas to be

maintained through the funding provided by the Park Maintenance District 4014 from the Rush, Shiloh Point and Goodman Subdivisions.

RECOMMENDATION

Staff recommends that Council approve the application submittal to the Safe Routes to School funding program for the trail connection from Chandelier Circle to the Big Ditch Trail.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Resolution of Intent to Dispose of Lot 1, Block 1 and Lots 1 & 2, Block 2 of Arlene Subdivision

DEPARTMENT: Public Works

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings owns Lot 1, Block 1 and Lots 1 & 2, Block 2 of Arlene Subdivision. These properties are located along Zimmerman Trail between Poly Drive and Grand Avenue as shown on the attached plat map. Now that the Zimmerman Trail street projects are completed, these properties are not needed for city use. The Public Works Department would like to sell these lots in order for them to be developed. The Council approved the zoning change to R-6000R on these parcels on August 28, 2006. This memo represents the first step in the property disposal process, as outlined in City Code Section 22-902.

ALTERNATIVES ANALYZED:

3. Approve the Resolution of Intent to Dispose of Lot 1, Block 1 and Lots 1 & 2, Block 2 of Arlene Subdivision and set a public hearing for January 8, 2007.
4. Do not approve the Resolution of Intent to Dispose of Lot 1, Block 1 and Lots 1 & 2, Block 2 of Arlene Subdivision.

FINANCIAL IMPACT: Approving the Resolution of Intent would have no cost. The sale of these lots is expected to generate approximately \$400,000, if the disposal is approved.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Dispose of Lot 1, Block 1, and Lots 1 & 2, Block 2 of Arlene Subdivision and set a public hearing for January 8, 2007.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- A. Boundary map
- B. Resolution of Intent to Dispose of Lot 1, Block 1, and Lots 1 & 2, Block 2 of Arlene Subdivision

RESOLUTION 06-_____

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE,
ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY,
DESCRIBING THE PROPERTY TO BE SOLD, DECLARING THE
INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND
AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located on Zimmerman Trail and described as Lot 1, Block 1, and Lots 1 & 2, Block 2 of Arlene Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file under Document #3387467, recorded on August 2, 2006, in the office of the Yellowstone County Clerk and Recorder's office.

WHEREAS, Article 22-900 BMCC requires the city to declare its intention to dispose of such lands, giving the public the opportunity to be heard regarding such action, and setting a public hearing date, and

WHEREAS, Article 22-900 BMCC also requires that all property owners within three hundred (300) feet of the exterior boundaries of said property, be notified by mail, fifteen (15) days in advance of the time, date, place of public hearing and the existing and proposed use.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLING, MONTANA, AS FOLLOWS:

PUBLIC HEARING. The public hearing date has been set for January 8, 2007, at 6:30 o'clock p.m. in the Council Chambers, located on the Second Floor of the Police Facility, 220 North 27th Street, Billings, Montana. The City Clerk is hereby directed to publish notice of the public hearing in The Billings Times in its regular issue on December 7th and 14th, 2006, and to mail a copy of such notice to all property owners within the three hundred (300) foot notification area.

APPROVED AND PASSED by the City Council of the City of Billings this 27th day of November, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: SID 1375 Claremont Road Resolution of Intent to Create District and Set a Public Hearing

DEPARTMENT: Public Works/Engineering

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Jeff Engel Construction, Inc., owner of 13 of the 17 lots proposed in the SID district boundary, has the desire to construct public improvements on Claremont Road between Lake Hills Drive and Gleneagles Boulevard. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Annandale Road as shown on the attached exhibit.

ALTERNATIVES ANALYZED:

2. Approve the Resolution of Intent to Create SID 1375 and set a public hearing for December 18, 2006, City Council Meeting; or
3. Do not approve the Resolution of Intent to Create SID 1375.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$424,476.45. The costs of the Improvements are to be paid from the following sources: (1) \$110,000.00 of Special Improvement District bonds hereinafter described; and (2) \$314,476.45 of cash contribution by Jeff Engel Construction, Inc., owner of 13 of the 17 lots in the District.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1375 and set a public hearing date for December 18, 2006.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1375 Claremont Road Resolution of Intent

INTRODUCTION

Jeff Engel Construction, Inc., owner of 13 of the 17 lots within the proposed boundary of the SID, has a desire to develop lots on Claremont Road. In order to develop these lots, all the necessary street improvements need to be constructed on Claremont Road. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements. To complete the project, it is necessary to create a Special Improvement District.

PROCEDURAL HISTORY

- November 27, 2006 – Resolution of Intent to Create SID 1375.
- December 18, 2006 – Public Hearing and Resolution Creating SID 1375.
- Spring 2007 – Professional Services Contract Award, Resolution Authorizing for Construction Bids and Construction Contract Award. (Proposed Schedule)

BACKGROUND

The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include water, sanitary sewer, storm drain, curb and gutter, street improvements to Claremont Road. Jeff Engel Construction, Inc., owner of 13 of the 17 lots in the District will pay a cash contribution to the project. The total cash contribution is equal to \$314,476.45 and represents 74 percent of the construction and administrative costs of the Improvements. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision.

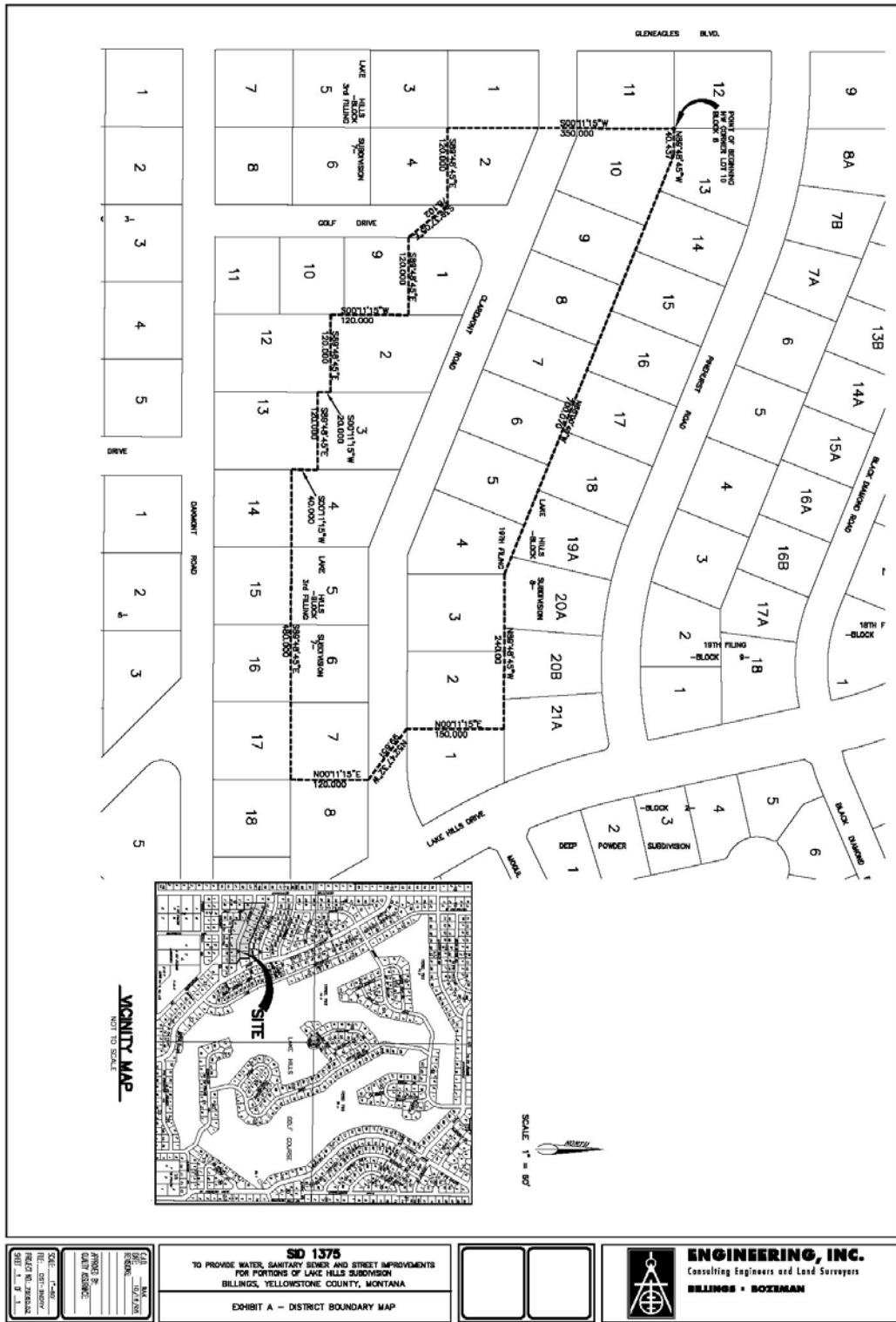
The public hearing will be held at the December 18, 2006, Council Meeting. If approved, it is anticipated that construction of SID 1375 will begin in the spring of 2007 and be completed by the summer of 2007.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1375 and set a public hearing date for December 18, 2006.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. SID 1375 Claremont Road Resolution of Intent



SD 1375
TO PROVIDE WATER, SANITARY SEWER AND STREET IMPROVEMENTS
FOR PORTIONS OF LAKE HILLS SUBDIVISION
BILLINGS, YELLOWSTONE COUNTY, MONTANA

EXHIBIT A = DISTRICT BOUNDARY MAP



ENGINEERING, INC.
Consulting Engineers and Land Surveyors
BILLINGS • BOZEMAN

ILLINOIS: MORTON

CD	_____
DD	_____
RE	_____
RE	_____

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. _____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1375; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the Resolution" was duly adopted by the City Council of the City at a meeting on November 27, 2006 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.)

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____;

_____;
voted against the same: _____;

_____;
or were absent: _____.

WITNESS my hand officially this _____ day of _____, 200 ____.

Marita Herold, CMC/AAE City Clerk

RESOLUTION NO. 06-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1375; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

BE IT RESOLVED by the City Council of the City of Billings (the City), Montana, as follows:

Section 1. Proposed Improvements; Intention To Create District. The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of Claremont Road, as more particularly described in Section 5. The total estimated costs of the Improvements are \$424,476.45. The costs of the Improvements are to be paid from the following sources: (1) \$110,000.00 of Special Improvement District bonds hereinafter described; and (2) \$314,476.45 of cash contribution by Jeff Engel Construction, Inc., the owner of 13 of the 17 lots in the District, as more particularly described in Sections 6 and 9(f). It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$110,000.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1375 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit F hereto (which are hereby incorporated herein and made a part hereof).

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and F are hereby declared to

be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

Section 5. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit E, is the construction of curb and gutter, sanitary sewer mains, sanitary sewer services, water mains, water services, and necessary street improvements and widening fronting Lots on Claremont Road within Lake Hills Subdivision.

Section 6. Engineer and Estimated Cost. The Engineer will be chosen through a proposal process. The City Engineer's Office has estimated that the costs of the Improvements, including all incidental costs, are \$424,476.45.

Section 7. Assessment Methods.

7.1. Property to be Assessed. All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the equal amount methods described in Section 7-12-4162, M.C.A., as particularly applied and set forth in this Section 7.

7.1.1 Equal Amount Method.

Assessment #1 will include water improvements to be constructed on Claremont Road between Lake Hills Drive and Gleneagles Boulevard. The properties to be assessed for these improvements include Lake Hills Subdivision 3rd Filing, Block 7, Lots 1,2, & 7; and Lake Hills Subdivision 19th Filing, Block 8, Lots 2-10. Each of these parcels will receive one water service. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving water improvements along with one water service, shall equally bear the costs of the water improvements as set forth in Part III hereto to arrive at an equal cost for the water improvements. The total estimated cost of Assessment #1 is \$28,111.52 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving water improvements and one water service each, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$7,027.88. Only Lake Hills Subdivision 3rd Filing, Block 7, Lots 1, 2, & 7 and Lake Hills Subdivision 19th Filing, Block 8, Lot 7 will be assessed for Assessment #1. The remaining parcels within Assessment #1 are owned by Jeff Engel Construction, Inc., which will be making a cash contribution for their assessment.

Assessment #2 will include water improvements to be constructed on Claremont Road between Lake Hills Drive and Gleneagles Boulevard. The properties to be assessed for these improvements include Lake Hills Subdivision 3rd Filing, Block 7, Lots 3-6; and Lake Hills Subdivision 3rd Filing, Block 6, Lot 2. Each of these parcels will receive two water services. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving water improvements along with two water services, shall equally bear the costs of the

water improvements as set forth in Part III hereto to arrive at an equal cost for the water improvements. The total estimated cost of Assessment #2 is \$35,734.90 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving water improvements and two water services each, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$7,146.98. Jeff Engel Construction, Inc. owns all of these properties and will be making a cash contribution for Assessment #2.

Assessment #3 will include sanitary sewer improvements to be constructed on Claremont Road between Lake Hills Drive and Gleneagles Boulevard. The properties to be assessed for these improvements include Lake Hills Subdivision 3rd Filing, Block 7, Lots 1, 2 & 7; and Lake Hills Subdivision 19th Filing, Block 8, Lot 2-10. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving sanitary sewer improvements and one sanitary sewer service, shall equally bear the costs of the sanitary sewer improvements as set forth in Part III hereto to arrive at an equal cost for the sanitary sewer improvements. The total estimated cost of Assessment #3 is \$25,958.02 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving sanitary sewer improvements and one sanitary sewer service, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$6,489.50. Only Lake Hills Subdivision 3rd Filing, Block 7, Lots 1, 2 & 7 and Lake Hills Subdivision 19th Filing, Block 8, Lot 7 will be assessed for Assessment #3. The remaining parcels within Assessment #3 are owned by Jeff Engel Construction, Inc., which will be making a cash contribution for their assessment.

Assessment #4 will include sanitary sewer improvements to be constructed on Claremont Road between Lake Hills Drive and Gleneagles Boulevard. The properties to be assessed for these improvements include Lake Hills Subdivision 3rd Filing, Block 7, Lots 3-6; Lake Hills Subdivision 3rd Filing, Block 6, Lot 2. Each of these parcels will receive two sanitary sewer services. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving sanitary sewer improvements and two sanitary sewer services, shall equally bear the costs of the sanitary sewer improvements as set forth in Part III hereto to arrive at an equal cost for the sanitary sewer improvements. The total estimated cost of Assessment #4 is \$37,933..29 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving sanitary sewer improvements and two sanitary sewer services, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$7,586.66. Jeff Engel Construction, Inc. owns all of these properties and will be making a cash contribution for Assessment #4.

Assessment #5 will include storm drain improvements to be constructed in Claremont Road between Lake Hills Drive and Gleneagles Boulevard. The properties to be assessed for these improvements include Lake Hills Subdivision 3rd Filing, Block 7, Lots 1,2, & 7; and Lake Hills Subdivision 19th Filing, Block 8, Lot 7. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has

determined that each lot, tract, or parcel of land, receiving storm drain improvements, shall equally bear the costs of the storm drain improvements as set forth in Part III hereto to arrive at an equal cost for the storm drain improvements. The total estimated cost of Assessment #5 is \$11,739.08 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving storm drain improvements, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$2,934.77. The remaining parcels within the district are owned by Jeff Engel Construction, Inc., who will be making a cash contribution for Assessment #5.

Assessment #6 will include street improvements to be constructed on on Claremont Road between Lake Hills Drive and Gleneagles Boulevard. The properties to be assessed for these improvements include Lake Hills Subdivision 3rd Filing, Block 7, Lots 1,2, & 7; and Lake Hills Subdivision 19th Filing, Block 8, Lot 7. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving street improvements, shall equally bear the costs of the street improvements as set forth in Part III hereto to arrive at an equal cost for the street improvements. The total estimated cost of Assessment #6 is \$44,191.38 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving street improvements, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be \$11,047.85. The remaining parcels within the district are owned by Jeff Engel Construction, Inc., who will be making a cash contribution for Assessment #6.

7.2. Assessment Methodologies Equitable and Consistent With Benefit. This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed therefore within the District.

Section 8. Payment of Assessments. The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property Owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$110,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$2,441 to \$18,520, and is set forth in Exhibit F. The average market value is \$4,145.24 with the median being \$3,070. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(b) **Diversity of Property Ownership.** There are a total of 17 parcels within the district boundaries. No improvements, public or private, are located on any of the parcels within the District. Thirteen (13) of these parcels are owned by Jeff Engel Construction, Inc. The remaining 4 parcels are owned by separate owners.

(c) **Comparison of Special Assessments and Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a parcel in the District) against each lot, parcel, or tract in the District in comparison to the estimated market value of such lot, parcel, or tract after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts, or parcels of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit F.

(d) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 17 properties, zero (0) properties were delinquent, and is set forth in Exhibit F.

(e) **The Public Benefit of the Improvements.** The total estimated costs of the Improvements are \$424,476.45. The costs of the Improvements are to be paid from the following sources: (1) \$110,000.00 of Special Improvement District bonds hereinafter described; and (2) \$314,476.45 of cash contribution by Jeff Engel Construction, Inc., owner of 13 of the 17 lots in the District. Nine of the properties within the District are zoned Residential 9600, and the remaining 8 properties are zoned Residential Multi-Family. The public improvements contemplated under the terms of this proposed District are required by the City Subdivision, Site Development and Zoning Ordinances in order for the parcels to develop.

(f) **Other Factors.** As previously noted, Jeff Engel Construction, Inc., owner of 13 of the 17 lots in the District will pay a cash contribution to the project. The total cash contribution is equal to \$314,476.45 and represents 74 percent of the construction and

administrative costs of the Improvements. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision.

Section 10. Reimbursement Expenditures.

10.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$110,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

10.04. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

10.05. Reimbursement Allocations. The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 11. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (December 15, 2006), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 18th day of December 2006, at 6:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 12. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Billings Times, a newspaper of general circulation in the county on November 30 and December 7, 2006, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 27th day of November 2006.

Mayor

Attest:

City Clerk

EXHIBIT E

SID 1375 Claremont Road SID

PROJECT DESCRIPTION

Special Improvement District No. 1375 shall construct the following improvements to Annandale Road.

Claremont Road – Lake Hills Drive to Gleneagles Boulevard

- 1) Construction of street, curb, gutter, sanitary sewer, and water improvements.
- 2) Construction of storm drain improvements.

EXHIBIT B

LEGAL DESCRIPTION

Beginning at a point which is the NW Corner of Lot 10, Block 8, Lake Hills Subdivision, Nineteenth Filing;

Thence from said point of beginning N 89°48'45" W a distance of 40.437';
thence S 68-00-40 E a distance of 700.070;
thence S 89-48-45 E a distance of 240.000;
thence S 00-11-15 W a distance of 150.000;
thence S 52-47-32 E a distance of 99.651;
thence S 00-11-15 W a distance of 120.000;
thence N 89-48-45 W a distance of 480.000;
thence N 00-11-15 E a distance of 40.000;
thence N 89-48-45 W a distance of 120.000;
thence N 00-11-15 E a distance of 20.000;
thence N 89-48-45 W a distance of 120.000;
thence N 00-11-15 E a distance of 120.000;
thence N 89-48-45 W a distance of 120.000;
thence N 39-37-05 W a distance of 78.102;
thence N 89-48-45 W a distance of 120.000;
thence N 00-11-15 E a distance of 350.000 to the point of beginning.

Said described Boundary containing a net and gross area of 7.83 acres.

PART III

SID 1375- CLAREMONT ROAD

TABLE OF ESTIMATED ASSESSMENTS PER PROPERTY FOR CASH CONTRIBUTION

STD COSTS

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J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 27, 2006

TITLE: Annexation Petition #06-15: Acknowledge receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: Owners and petitioners, Rod Wilson and Judith Deines, are requesting annexation of an approximate 39.55 acre property legally described as Tract 1A of Certificate of Survey 3279 Amended, located in the SW1/4, Section 32, Township 1N, Range 25E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is generally located east of the intersection of Grand Avenue and 54th Street West adjacent to Bishop Fox Subdivision. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a major subdivision including several possible zone changes on the property. The subject property is currently vacant agricultural land and is zoned Agricultural Suburban (AS). The 1-acre tract located on the southeast portion of the property was created by an agricultural exemption in October 2006, and contains a single-family residence to remain in the county. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for December 11, 2006. The Council will vote on the petition at that public hearing.

ALTERNATIVES ANALYZED: Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is bordered on the west and southwest by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next six (6) years.

FINANCIAL IMPACT: A fiscal impact analysis and staff recommendation will be prepared and presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for December 11, 2006, to consider annexing this property.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A. Property Data
- B. Annexation Petition
- C. Annexation Map

ATTACHMENT A

Property Data

Type of annexation: Petitioned - MCA 7-2-4600

Petitioner: Rod Wilson and Judith Deines

Purpose of annexation: To Obtain City Services

Property included: N1/2, Section 20, T1N, R26E and Certificate of Survey 1904

Location: East of the intersection of Grand Avenue and 54th Street West adjacent to Bishop Fox Subdivision

Total area: 39.55 acres

Current zoning: Agricultural Suburban

Current land use: Vacant

Future zoning: Residential Multi-Family Restricted (RMF-R), Residential 5000 (R-50), Residential 7000 (R-70), and Residential 9600 (R-96)

Future land use: Multi-Family, Duplexes, and Single-Family Residential

ATTACHMENT B

Annexation Petition

PETITION FOR ANNEXATION TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

The map must show:

- a. The present and proposed boundaries of the municipality;
- b. The present streets, major trunk water mains and sewer mains;
- c. The zoning of the property requesting annexation and the property immediately adjacent to it.

3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
<u>10/13/06</u>	Grand Peaks LLC	<u>John Wilen</u>	100 Emerald Drive Billings, MT 59105
<u>10/13/06</u>	Judith D. Deines	<u>Judith D. Deines</u>	5043 Grand Avenue Billings, MT 59106

(continued on separate page)

Revised 6/99

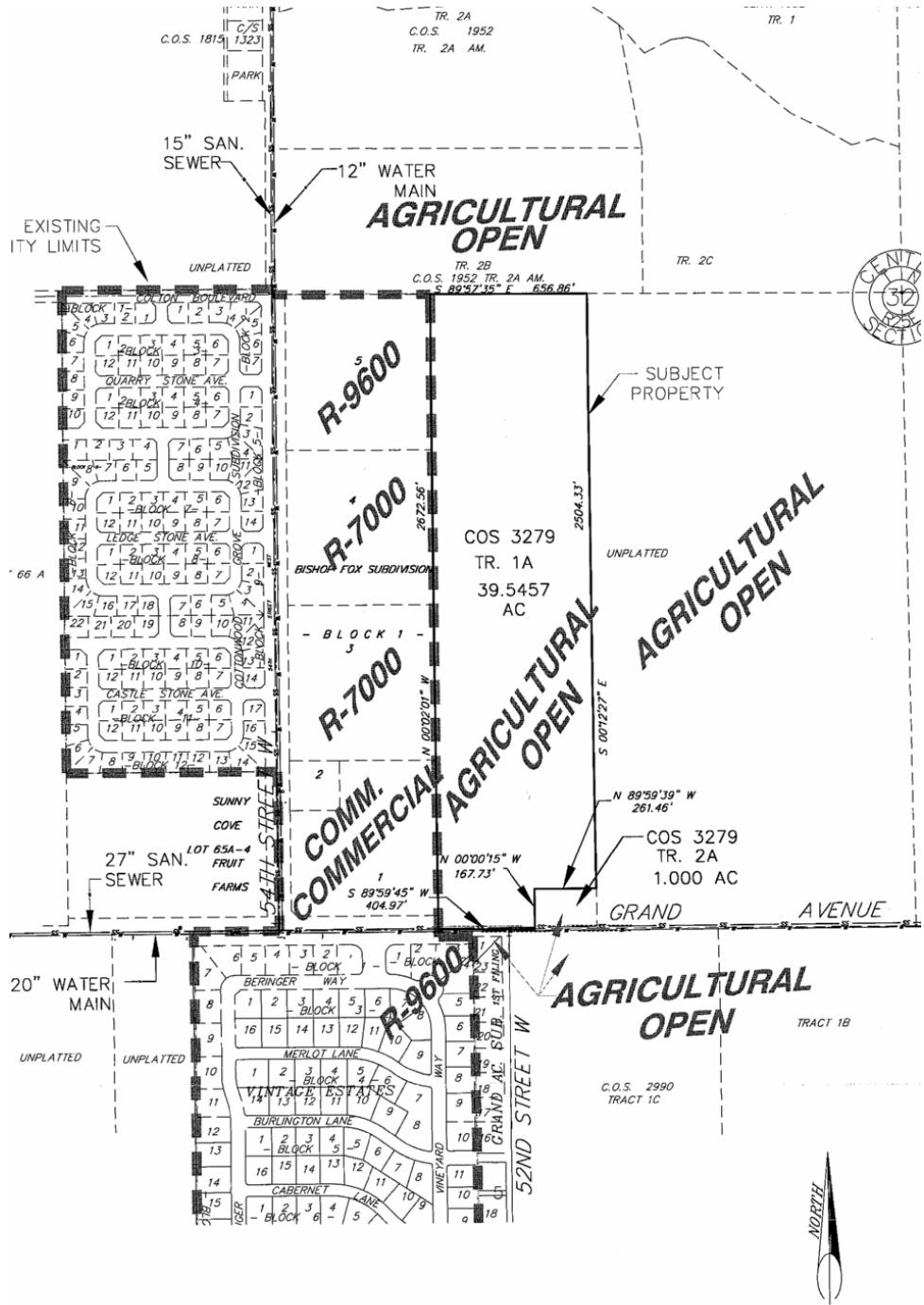
(Should be completed prior to obtaining signatures of resident freeholder electors)
DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
Tract 1A Certificate of Survey 3279	D04704	North of Grand Avenue at 52 nd Street West	Agricultural	Grand Peaks LLC	100 Emerald Drive Billings, MT 59106	406/248-5514
Tract 1A Certificate of Survey 3279	D04704	North of Grand Avenue at 52 nd Street West	Agricultural	Judith D. Deines	5043 Grand Avenue Billings, MT 59106	406/656-1361

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 10/16/06 Received By: Jeanne Lindholm Petition Number: 06-15
Fee Paid: \$800.00 10/25/06

ATTACHMENT C
Annexation Map



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K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Final Plat of Josephine Crossing Subdivision
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Josephine Crossing Subdivision is being presented to Council for approval. On May 22, 2006, the City Council conditionally approved the 143 lot major plat on an 89.381 acre property. The subject property is located east of Mullowney Lane, directly south of Elysian Road, north of the Yellowstone River (south of the West Billings I-90 Interchange) and is zoned Planned Development. The owner is McCall Development, Inc. and the representing agent is Engineering, Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

FINANCIAL IMPACT: Should the City Council approve the final plat, the subject property may further develop, resulting in additional tax revenues for the City.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Josephine Crossing Subdivision.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

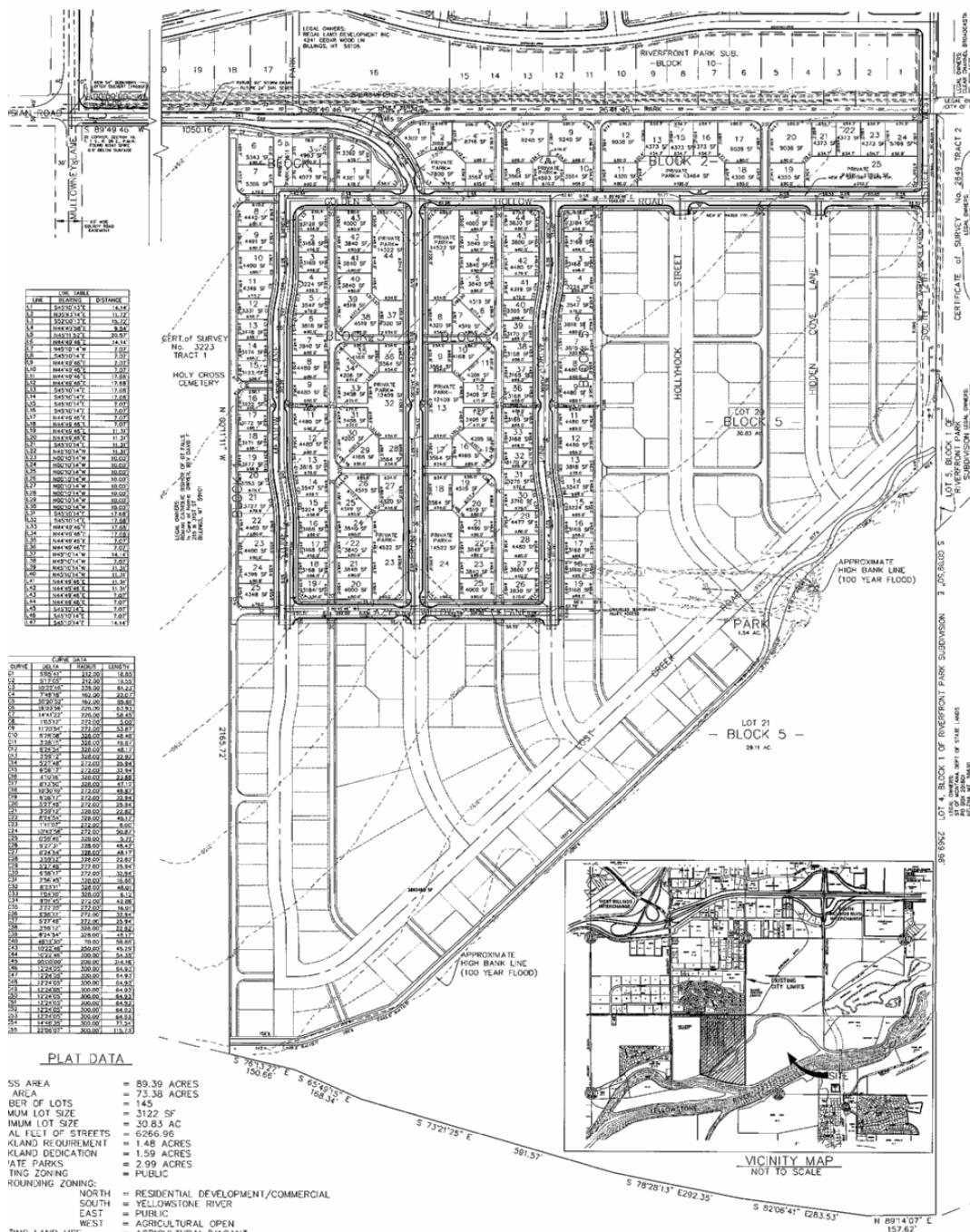
A: Plat

PRELIMINARY PLAT OF
JOSEPHINE CROSSING SUBDIVISION

BEING THE UNPLATTED LANDS
SITUATED IN THE NORTHWEST 1/4, OF SECTION 20, T. 1 S., R. 26 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 100'

MARCH, 2006
BILLINGS, MONTANA



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L1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 27, 2006

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$2,039,652.00 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 27, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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L2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,456,671.30 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 3, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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L3



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

SUBJECT: Payment of Claims

DEPARTMENT: Municipal Court

PRESENTED BY: Nikki R. Schaubel, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$205,048.47 have been audited and are presented for your approval for payment. A complete listing of the claims dated October 1, 2006 to October 31, 2006 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, NOVEMBER 27, 2006**

TITLE: Public Hearing for Special Review #830

DEPARTMENT: Planning & Community Services

PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review to construct 6-plex dwelling units on three lots on the west side of 31st Street West north of Central Avenue in a Residential-6,000 zone. The owner is William Eaton and Brian Johnson of Homesite Designers is the agent. The Zoning Commission conducted a public hearing on November 8, 2006, and is forwarding a recommendation of denial to the City Council on a 4-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of denial of Special Review #830 on a 4-0 vote.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

This is a request for a special review to locate three (3) 6-plex multifamily buildings on Lot 2, Block 6, Lots 1 & 2 Block 5 Aspen Grove Subdivision, 2nd Filing located west of 31st Street West and north of Central Avenue. The property is zoned Residential-6,000 and multifamily dwellings can be allowed by special review approval. Central Acres Subdivision to the west is zoned R-9,600 and is a completed single-family neighborhood. One 4-plex condominium, Meadow Vista, is adjacent (south) of Lot 2, Block 6 of Aspen Grove Subdivision, 2nd filing. This 4-plex was constructed in 1994, prior to the regulation amendment that required special review approval for multifamily dwellings in Residential-6,000 zones.

PROCEDURAL HISTORY

- A special review application to locate three (3) 6-plex multifamily buildings was received on October 2, 2006.
- The City Zoning Commission held a public hearing on November 8, 2006, and is forwarding a recommendation of denial to the City Council on a 4-0 vote.
- The City Council will conduct a public hearing and consider this application on November 27, 2006.

BACKGROUND

This property is located north of Central Avenue in an existing neighborhood of single family and two-family homes. Aspen Grove Subdivision and Millice Park Subdivision to the north and east are zoned Residential-7,000 and are a mixture of single-family and two-family residences. South of Central Avenue the zoning is variable from R-9,600 to Residential Multifamily-Restricted. Hunter's Pointe Apartments south of Central Avenue is zoned Residential Multi-family-Restricted. West of 32nd Street West, there are four 4-plex multifamily dwellings just east of 34th Street West. All of these units were constructed in the mid-1980s. No other multifamily dwellings exist in this immediate area. The Aspen Grove Town Homes are proposed as six attached two-story dwelling units on each of the three lots. Each structure is proposed to be a two-story building with one covered parking space and one driveway parking space. The parking spaces are proposed to be accessed from the existing alley.

There is one 4-plex multifamily dwelling south of the proposed Aspen Grove Town homes. In 1977, this property and the undeveloped land east of 31st Street West were re-zoned from R-9,600 to R-6,000. In 1977, 31st Street West separated this property from Central Acres Subdivision, zoned R-9,600 to the west. In 1985, Aspen Grove Subdivision, 2nd Filing re-located 31st Street West to the east of its original location. The Residential-6,000 zoning was placed directly adjacent to the Residential-9,600 zoning in the Central Acres Subdivision. The single family homes in Central Acres Subdivision directly west of the subject lots all face to the east, but driveways to these homes are located on Lynn Avenue and St. John's Avenue.

The Planning Department reviewed this application and recommended denial to the Zoning Commission. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the

objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria in so far that it is within the Residential-6,000 zone that may allow multifamily dwelling by special review approval. The form of the application is correct and the proposed development of the property for the multifamily dwelling units appears to conform to site development standards. More detailed landscaping and parking plans are normally reviewed at the time of building permit submittal.

The application does not conform to the second and third criteria. Residential-6,000 zoning districts are *“intended to provide for medium density residential dwellings on lots served by public water and sewer services, with provisions for multi-family dwellings with a maximum of ten (10) dwelling units per structure.”* Prior to 1996, multifamily dwellings were allowed by right in the Residential-6,000 zone. Subsequently, the city and the county amended the zoning regulations to allow multifamily dwellings only by special review approval. At the time, the city and county recognized that some areas that were zoned Residential-6,000 may not be appropriate for multifamily dwellings.

The proposal is not in conformance with second criteria specifically it is not in accordance with the goals of the 2003 Growth Policy. The 2003 Growth Policy has a goal of predictable land use decisions that are consistent with neighborhood character and land use patterns. (*Land Use Element: Goal 1. pg-5-*) The proposed 6-plex town homes are not consistent with the character of this primarily single-family and two-family neighborhood. The land use patterns established north of Central Avenue, a principal arterial street, range in population density from 4-8 dwelling units per acre. The proposed project density is 12-14 dwelling units per acre. This density is not consistent with the neighborhood character and land use patterns. The 2003 Growth Policy has a goal of encouraging developments that are sensitive to and compatible with the character of adjacent neighborhoods. (*Land Use Element: Goal 2: pg-6-*) This goal can be achieved by closely matching the type of housing directly adjacent to the proposed development. Most of the development in this neighborhood is single-family and two-family dwellings. There is one 4-plex condominium to the south of the proposed development. The proposed 6-plex town homes do not match the existing housing types in the neighborhood.

The proposal is not in conformance with the third criteria for special review. The proposed 6-plex town homes are not compatible with the predominate type of housing in this neighborhood. One 4-plex condominium is adjacent to the south of the proposed development but single-family and two-family homes predominate to the west and north. There are no conditions that can be proposed to minimize the adverse impacts of the proposal. The Zoning Commission conducted the public hearing and voted 4-0 to recommend denial to the City Council.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).

This application does comply with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy. This application is not consistent with the purposes of Chapter 27 and the 2003 Growth Policy. The application does not encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns. The application does not encourage new developments that are sensitive to and compatible with the character of the adjacent neighborhood.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The proposed town homes are not compatible with the predominate type of housing in the neighborhood and no conditions of approval are recommended.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of denial of Special Review #830 on a 4-0 vote.

CONDITIONS OF APPROVAL

None

STAKEHOLDERS

The public hearing was held on November 8, 2006, before the City Zoning Commission. Sheldon Eaton and Brian Johnson were present at the hearing as agents for the property owner and explained the proposal to the Zoning Commission. There were eight (8) surrounding property owners who testified before the Zoning Commission. Six (6) letters of opposition were received. One of the letters in opposition was signed by 30 surrounding property owners.

Mr. Brian Johnson explained the proposal to the Zoning Commission using computer graphics and diagrams. Mr. Johnson stated Mr. Eaton first disclosed his intention to construct multi-family dwellings on the property in 1984 when the subdivision was approved. Mr. Johnson displayed the concept rendering of the 8-10-plex apartment buildings considered for construction in 1984. Mr. Johnson explained the original plan was put on hold due to economic reasons. Mr. Johnson worked with the owner to design buildings that would complement and be aesthetically

pleasing in the existing neighborhood. Mr. Johnson showed an illustration of what the owner could build on the lots without special review approval or zoning variances. The zoning regulations would allow two (2) duplex units on each lot, up to 34 feet in height and covering 40% of the lot area or 3,600 square feet for each duplex. This style and type of construction is not the intent of the owner but what is allowed by the zoning regulations.

Mr. Johnson stated he and the owner worked over the past week to present elevation renderings of the 6-plex town homes that respond to the letters of opposition received. Mr. Johnson noted the buildings would be a maximum of 29 feet tall at the peak of the gable roof, 25 feet along the side elevation and about 10 feet tall at the garage on the alley access. Mr. Johnson stated the target market for the dwelling units would be empty-nesters who want to maintain independence but not have the burden of mowing grass, landscaping, shoveling snow and the like. The project will have a condominium association that will provide security and maintenance. The units will likely sell in the \$250,000 range. Each unit will have a front door that faces the street, not the alley and will have substantial green space around the building. Mr. Johnson noted the application meets several of the goals of the 2003 Growth Policy including contiguous development focused in and around population centers, more housing choices within each neighborhood and attractive and accessible communities.

Susan Wilkerson, owner of property at 3104 Lynn Avenue, stated she was opposed to the 6-plex town homes. Her front yard faces these lots and if constructed as proposed will dwarf her modest one-story single family home. Her home was constructed to face 31st Street West before it was moved to the east for this subdivision. She objected to the applicant's implied threat to building 34 foot tall box-style duplexes if the Zoning Commission wouldn't agree to approve the 6-plex town homes. Mrs. Wilkerson stated her biggest concern is with the existing and increased traffic in their neighborhood. She stated that since 32nd Street West connected up to Rimrock Road, it is almost impossible to enter traffic on Central Avenue or 32nd Street West. She stated the existing 4-plex on the lot that faces Central Avenue cause parking problems in the neighborhood. The visitors to the 4-plex park and block the alley and have damaged her fence.

Mike Svetich of 277 Montclair Drive stated he was opposed to the 6-plex town homes. He stated when he bought his home on Montclair Drive he asked Bill Eaton about this vacant land. Mr. Eaton told him that 31st Street West would not be a through street and that Montclair Drive would also be a dead-end street. Both streets now connect through the subdivision. Mr. Svetich also stated Mr. Eaton assured him the lots would have either single family or duplexes but not multifamily dwellings. Mr. Svetich stated the new traffic added to the existing traffic problems in the neighborhood would make it three times worse.

Gerry Voto of 3128 Lynn Avenue stated he was opposed to the 6-plex town homes. His property is about 4 lots west of the proposed development. In 1984, when his subdivision was annexed, no one was concerned about the vacant land east of their property. The land has sat vacant and undeveloped for over 20 years. His house is limited by subdivision covenants to 18 feet in building height. This subdivision has no covenants or restrictions on building height. If the buildings are taller than 18 or 20 feet they will overpower the rest of the neighborhood and look

out of place. He noted the front of these proposed dwelling should face 31st Street West, not Lynn Avenue or St. John's Avenue. If the buildings had to front 31st Street West he doubted a 6-plex would fit on the lot. Mr. Voto stated the zoning on these lots is incompatible with his neighborhood and shouldn't have been allowed. The resulting additional traffic will make a bad problem even worse.

Rhonda Bidlake of 3107 St. John's Avenue stated she was opposed to the project. She noted she also submitted a written objection to the project. The proposed 18 two-story town homes will negatively affect her property value. There was no guarantee the units could not be rentals and rental homes or apartments in a neighborhood negatively effect property value of single family or two family homes. Mrs. Bidlake stated she thought the developer could build something more compatible if it was limited to a single story structure just like all the other homes in the neighborhood. This project is a big complex in a small neighborhood.

Greg Goodnature of 3051 St. John's Avenue stated he opposed the project. The developer should build single family or two-family homes on the lots. The owner shouldn't impose this type of construction in the neighborhood.

Sheila Foos of 3124 St. John's Avenue stated she opposed the project and submitted a written protest prior to the Zoning Commission hearing. She stated she recently moved to the neighborhood and the community in the area was very good. Neighbors welcomed her to the area. Before she purchased her home, she noticed the area did have duplexes but they were well maintained and did appear to have stable occupants. She stated since Zimmerman Trail was connected to 32nd Street West, getting out into traffic on Central or 32nd Street West is almost impossible. This project will make that situation worse. She stated she did not like the alley access to the garages, especially if the alleys are not paved. This will create more dust and noise in the neighborhood.

Ted Blazina of 265 Montclair stated his biggest concern is increase cut-through traffic. He stated the only reliable way for anyone to get out of the neighborhood since Zimmerman Trail was opened is to use Montclair Drive to Broadwater Avenue. His second concern is the property value in the area. Multifamily dwelling adjacent to single family homes reduce the value of the single family homes.

Lois Coey of 3103 Lynn Avenue stated she is opposed to the project. She submitted a written objection to the development prior to the public hearing. She stated her front yard is like most peoples back yard and it faces these lots to the east. This project will eliminate any privacy she has in her yard. The new traffic in the alley will create too much traffic on an unpaved area resulting in dust and noise. She is concerned about the resale value of her property. The development will likely raise taxable value of property in the area but will negatively affect the market and resale value of the single family homes.

Mr. Johnson provided rebuttal to the testimony against the project. He stated the project target market required a greater density than single family or two family dwellings. He stated the owner could have proposed up to a 9-plex multifamily unit on each lot but chose to propose the two-

story 6-plex town homes. He stated the Fire Department assigns addresses at the time of building permit application and it is the developer's choice to establish the front yard when a lot faces two intersecting streets. He stated that each unit will have two off-street parking spaces and the front doors of each unit will face a street. Visitor parking would be on the street and the streets are wide enough to accommodate this type of parking. He stated the maximum height will not overpower the existing homes in the neighborhood and is not as tall as allowed by the zoning regulations. He stated traffic in the neighborhood will be impacted regardless of the density built on these lots. This is a problem that one developer cannot fix. He stated that property values should be increased with the proposed \$4.5 million dollar investment by Mr. Eaton. The existing vacant lots don't enhance existing property values. He believes the 2003 Growth Policy supports the proposed development. The Growth Policy is not a regulation but a philosophy and open to interpretation. He stated that as many goals support the project as don't support the project. He stated the project prevents sprawl by creating well designed infill development. The style of the buildings is a Craftsman style that has been developed in Billings and Bozeman. He stated he and the owner were willing to meet with the neighborhood to address any remaining concerns with the project. He stated the owner appreciates the time and effort the city staff and neighbors have given to consideration of the project.

The Zoning Commission considered the testimony and the staff recommendation of denial. The Zoning Commission moved to recommend denial of the special review request and voted 4-0 to forward this recommendation to the City Council.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does not conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- The project does not encourage predictable land use decisions that are consistent with the neighborhood character and land use patterns.

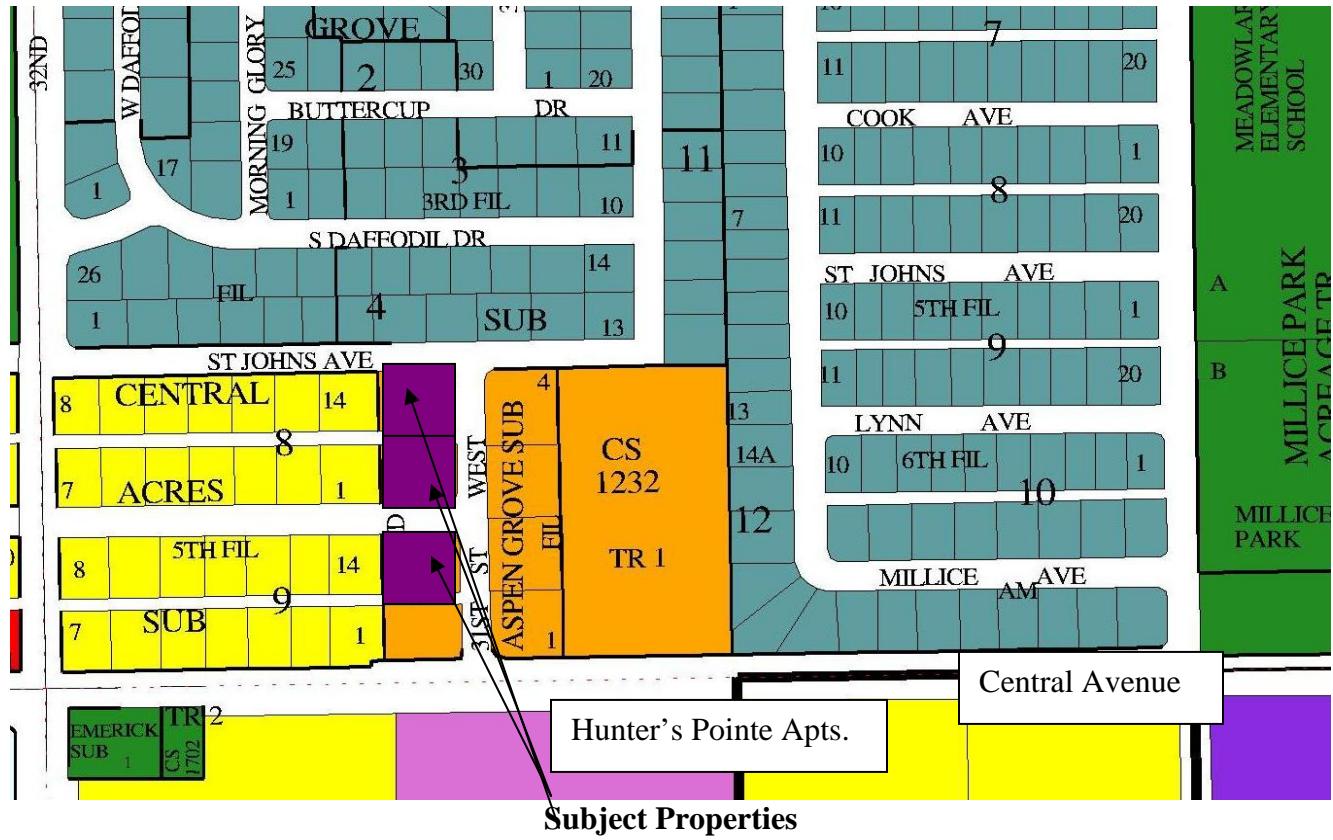
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of denial of Special Review #830 on a 4-0 vote.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

ATTACHMENT A
Zoning Map – Special Review #830



ATTACHMENT B
Site photographs –Special Review #830

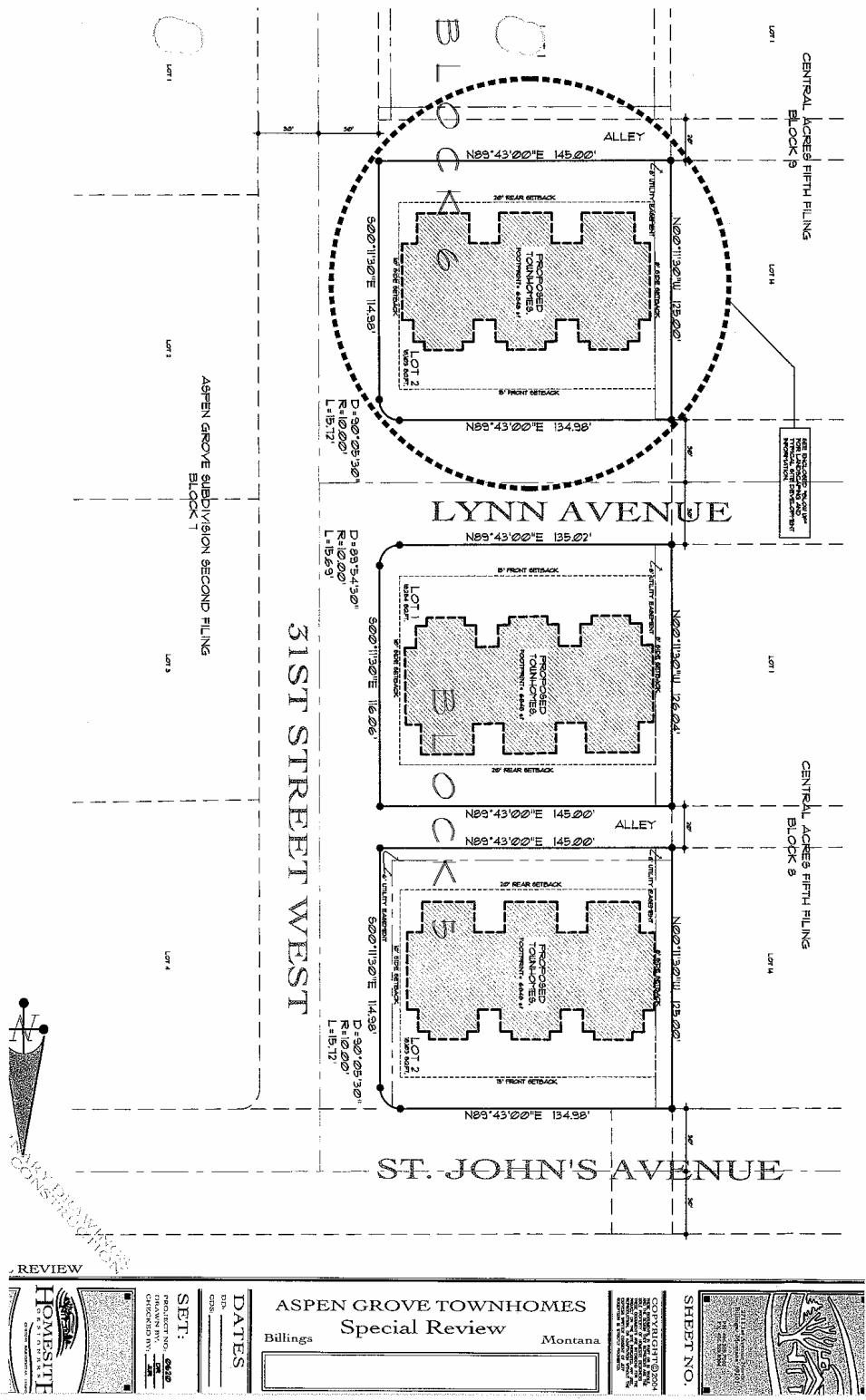


Lots 1 & 2, Block 5 Aspen Grove Subdivision, 2nd Filing – North West corner of Lynn Avenue and 31st Street West

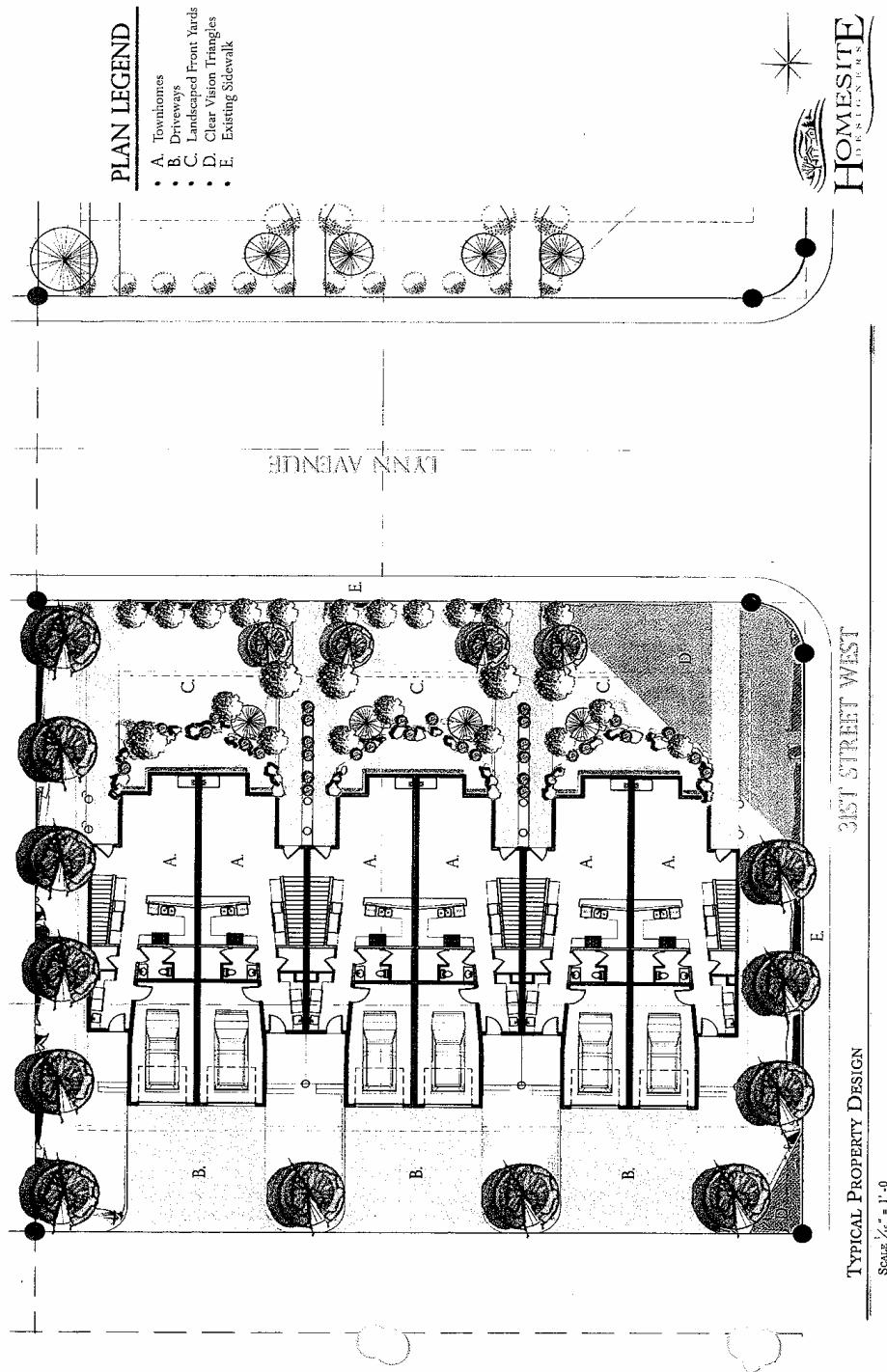


Lot 2, Block 6 Aspen Grove Subdivision, 2nd Filing – south west corner of Lynn Avenue and 31st Street West

ATTACHMENT C
Site Plan Special Review #830



Attachment C, continued
Site Plan –Special Review #830



[\(Back to Regular Agenda\)](#)

3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 27, 2006

TITLE: Public Hearing & Site Development Ordinance Variance #OP06-03

DEPARTMENT: Public Works/Engineering

PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The West Park Denture Clinic, located on Lots 21-24, Block 1, Mandelkow Subdivision, Amended, being generally located midway between 18th Street West and 19th Street West on Grand Avenue, is seeking a variance to provide fewer parking stalls than what City Ordinance allows. City Ordinance, Section 6-1203 (j) states that for medical doctor and dental clinics located outside the medical corridor the minimum parking requirements are 1 stall per 200 square feet of gross floor area. The proposed site consist of a 5720 square foot building and 17 parking stalls. According to City Ordinance, the required parking for the development would be 23 parking stalls. A site plan showing the overall project is shown in Attachment A.

ALTERNATIVES ANALYZED:

1. Approve the variance.
2. Do not approve the variance.

FINANCIAL IMPACT: There is no direct financial impact to the City. Advertising costs for the public hearing are offset by the variance application fee.

RECOMMENDATION

Staff recommends that Council deny the variance allowing the owner to construct 17 parking stalls instead of the required 23 parking stalls.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- A. Proposed Site Sketch (1 page)
- B. Letter from Owner's Representative (5 page)
- C. Letter from Owner's Representative (5 pages)

INTRODUCTION

The West Park Denture Clinic, located on Lots 21-24, Block 1, Mandelkow Subdivision, Amended, being generally located midway between 18th Street West and 19th Street West on Grand Avenue, is seeking a variance to provide fewer parking stalls than what City Ordinance allows. The owner is seeking a reduction in the minimum required number of off-street parking spaces from 23 spaces as required by Section 12-603(j) of the City's Site Development Ordinance, to 17 spaces.

BACKGROUND

The West Park Denture Clinic is proposing a remodel and slight expansion to an existing building. The total square footage of the building is 5720 s.f. The proposal calls for 2600 s.f. of denture clinic space on the upper level, 400 s.f. of storage space and 2700 s.f. of office space on the basement level.

In accordance with past City practices, the owner is calculating the required parking based on 1 stall per 200 s.f. of denture clinic space, 1 stall per 1000 s.f. of storage area space and 1 stall per 300 s.f. of office area. The required parking for the clinic portion, storage and office is 13 stalls, 1 stall and 9 stalls respectively. If this variance is accepted, the owner will fence off access to the alley. A site plan showing the overall project is shown in Attachment A.

If this variance is denied, the owner has two options to meet the requirements of the Site Development Ordinances. The first option would be to angle their parking stalls and force customers, patients and employees onto the alley located to the south of the property. As the alley is currently a gravel alley, the owner would be required to pave a portion of the alley from their exit to the nearest hard surface. The second option would be to decrease the space used for office and increase the amount of storage space in building. Storage space has one-fifth the required parking as the dental clinic, so the more storage space the building occupies, the fewer parking stalls are required.

ALTERNATIVES ANALYSIS

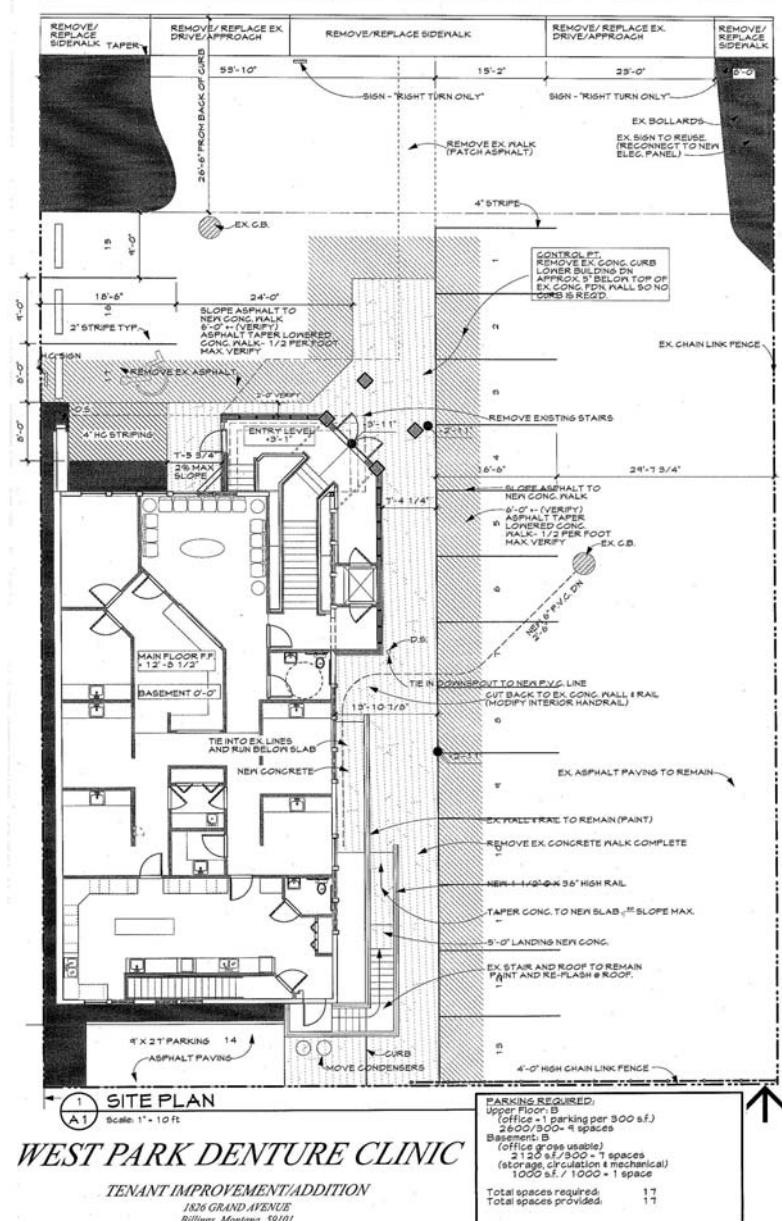
1. Approve the variance. Approval of this variance will allow for the owner to not pave the alley nor make his usable office space smaller. On days when his denture clinic is busy, there may be traffic congestion problems.
2. Do not approve the variance. Denial of this variance will require the owner to either pave a portion of the alley or decrease the amount of office space in his building and increase the amount of storage space.

RECOMMENDATION

Staff recommends that Council deny the variance allowing the owner to construct 17 parking stalls instead of the required 23 parking stalls.

ATTACHMENTS

- A. Proposed Site Sketch (1 page)
- B. Letter from Owner's Representative (5 page)
- C. Letter from Owner's Representative (5 page)





11/8/06

Tyler Westrope
Staff Engineer I
Engineering Division
Public Works Department
501 N. Broadway, 4th Floor
Billings, MT 59101

PROJECT: WEST PARK DENTURE CLINIC, 1826 Grand Avenue

PLAN REVIEW: 06-1129
RE: Request for Variance

Dear Tyler,

The purpose of this letter is to request a variance from City's off-street parking regulations (Sec. 6-1203) so that the West Park Denture Clinic can include 17 instead of 23 parking spaces as part of its building permit site plan. A copy of the proposed dimensional site plan is included with this application.

As a threshold matter, my clients continue to believe that the City off-street parking regulations do not apply to this remodeling project because the building is not being materially enlarged within the meaning of the regulations and there will not be a "change of occupancy." These issues are addressed in greater detail in Bill Cole's letter to you dated October 11, 2006, which should be considered as part of this application.

However, even if the off-street parking regulations do apply in this case, there are several reasons why a variance should be granted. First, public safety will be improved if fewer parking spaces are required and access to the alley is blocked off so that the parking lot cannot be used as a cut-through between the alley and Grand Avenue. Second, there is a significant question whether access to the alley is even permissible in this case, and if it is not then the only option available to my client is to have vehicles enter and exit on Grand Avenue. Third, the use that is most comparable to my clients' upper-level denture clinic is not a "dental clinic" (requiring one space per 200 sq. ft.) but instead an "office" (one space per 300 sq. ft.), and 17 spaces are enough to satisfy the "office" regulations. Fourth, the off-site parking regulations, which are based on gross area, significantly overstate the actual parking that is needed for occupants of the lower level, roughly 46% of which is used for non-occupied mechanical rooms, stairways, corridors, and lobby space. Lastly, the sizeable cost of paving the alley (approximately \$25,000 to \$30,000) would impose an extreme and unnecessary hardship on the owners of the building.

Background

West Park Denture Clinic currently occupies the small brown building located at 1460 West

WEST PARK DENTURE CLINIC, 1826 Grand Avenue
PLAN REVIEW: 06-1129
Request for Variance, 11/08/06

17th Street between Verizon Wireless and Valet Cleaners. Four people typically work in the building: denturist Grant Olson, two laboratory technicians, and a receptionist / office assistant. There are nine parking spaces, two or three of which are almost always empty.

The building at 1826 Grand Avenue that is the subject of this application was originally used as office space on the upper and lower levels. The alley behind the building abuts an "R" zone, and numerous houses are located on the other side of the alley. Grant and Bethany Olson purchased the building in December, 2006. The Olsons plan to relocate the denture clinic to the upper level, which includes approximately 2,600 square feet. They will use part of the lower level for storage and rent the remainder as office space once it has been remodeled. The lower level, which includes a new lobby and entryway, has about 3,120 square feet of office area, utility space, storage, and entryway area. If applicable, the City parking requirements, which are based on gross area, would require 10 spaces for the lower level users (2720 sq. ft. /300 for office area plus 400 sq. ft./1000 for storage and utilities).

The parking requirements for the upper level are 13 spaces if the space is characterized as a "dental clinic" (2600 sq. ft./200) versus 9 spaces if characterized as "office" space (2600 sq. ft./300). The only way to provide 23 total spaces would be to employ an angled parking arrangement that would require one-way traffic to exit into the alley. Under that scenario the City will require that the alley be paved to City standards at a cost of about \$25,000 to \$30,000. By contrast, if the Owners went to a right-angle parking arrangement traffic could enter and exit onto Grand Avenue without having to access or pave the alley, but the number of parking spaces would have to be reduced from 23 to 17.

One reason this reduction is justified is that the City wants to "take" at least four parking spaces that are currently located between the building and Grand Avenue. The City contends that even though these spaces have serviced the building for decades, the owners must now comply with City Code Sec. 27-602(b), which requires that no parking spaces or driving aisles be built within 50' of the centerline of a major arterial street. The City is insisting on compliance with this requirement even though my clients will lose at least four existing spaces and there are no immediate plans to widen this part of Grand Avenue.

Eliminating Cut-Through Traffic Will Promote Public Safety

Currently many drivers use the parking lot at 1826 Grand Avenue as a cut-through between the alley and Grand Avenue. Paving the alley would only make the problem worse by encouraging more and faster traffic in the alley. The general contractor who is remodeling the Olsons' building and his subcontractors have complained that this traffic puts their workers in danger. The Olsons are concerned that their patients, who tend to be elderly, will be especially vulnerable to injury if traffic continues to use the parking lot as a way to cut between the alley and Grand Avenue. This problem can be solved by blocking access to the alley with a fence. Installation of the fence can be made a condition of granting the variance.

@ Architecture, Inc.
848 Main St., Suite 7, Billings, MT 59105
406.245.2724 fax - 245.0207 cell: 406.698.1582
alex@atarchitecture.com

WEST PARK DENTURE CLINIC, 1826 Grand Avenue
PLAN REVIEW: 06-1129
Request for Variance, 11/08/06

Access to the Alley May Not Be An Option

City Code Sec. 6-1203(r) provides: "Limited access through the alley. Customer access via an alley to any commercial use on a lot which is adjacent to an alley which abuts an 'R' zone shall not be permitted over that alley." On its surface this code provision appears to prohibit traffic between a commercial establishment and an alley adjacent to an R zone. If that is the case then the only reasonable alternative that would allow the Olsons to make effective use of their property would be to grant this variance and block access to the alley so that traffic has to enter and exit on Grand Avenue in compliance with Sec. 6-1203(r).

Admittedly, if diagonal parking were installed the majority of cars would be forced to travel from the commercial use to the alley instead of the other way around, i.e. from the alley to the commercial use. This distinction might or might not satisfy the intent and technical requirements of the ordinance. By granting the requested variance the need to resolve this issue relating to Sec. 6-1203(r).

The Denture Clinic Is Comparable to an "Office" Because Few Patients are On-Site at the Same Time

The parking requirements for the upper level were originally calculated on the assumption that the closest comparable use for this denture clinic was a "medical or dentist office or clinic." That assumption was incorrect.

The typical medical or dental clinic has a number of professionals and paraprofessionals who each see patients. For example, the typical dental clinic has a dentist, one or two dental hygienists, and two or three dental assistants in addition to one or two office assistants and perhaps a laboratory/sterilization technician. The dentist, hygienists, and dental assistants all have extensive contact with patients, meaning that at any given time there are numerous patients coming or going, being treated, waiting, and occupying parking spaces. By contrast, the denturist is the only professional who sees patients at a denture clinic. The lab technicians manufacture the dentures in the laboratory and do not deal directly with patients.

In this case only about 33% of the upper level will be used for examination rooms, waiting room, and a bathroom to be occupied by patients. According to Grant Olson, he usually only has one or two patients on site at any given time – the person being treated and, perhaps, the person who has the next appointment. In terms of parking consumption, this denture clinic is therefore much more comparable to an "office" than it is to a medical or dental clinic.

By granting this variance on grounds the use proposed by West Park Denture Clinic is more comparable to "office" rather than a "medical or dental office or clinic" the City can preserve its ability to require more parking later if a new owner wanted to change the use to anything other than office space. For example, if a doctor or dentist later wanted to remodel the space to use it as a real medical or dental clinic the City could condition the new building permit on providing more parking at that time. By granting this variance the City does not

@ Architecture, Inc.
848 Main St., Suite 7, Billings, MT 59105
406.245.2724 fax - 245.0207 cell: 406.698.1582
alex@atarchitecture.com

WEST PARK DENTURE CLINIC, 1826 Grand Avenue
PLAN REVIEW: 06-1129
Request for Variance, 11/08/06

close out that option.

The Usable Space on the Lower Level is Very Limited, Thereby Reducing Overall Parking Needs

The parking requirements in the City code are based on a building's gross area, but a more accurate prediction of parking needs can be made based on the amount of space that will be actually occupied by users on a regular basis. In this case, much of the space on the first level will be devoted to two mechanical rooms, a stairway, a large corridor, a lobby, and other space that does not generate a need for parking.

For example, about 400 sq. feet of the first level will be new lobby/circulation space. Although this space technically creates a need for one and a half additional parking spaces (assuming one space for each 300 sq. ft. of office space), it does not actually increase the need for parking at all. Similarly, the new layout of the lower level will include additional corridor space in order to accommodate the offices on that floor. This change will actually decrease the amount of occupied space on the lower level and, along with it, some of the need for parking; but because the regulations are based on gross area, which has not changed, the parking requirements will stay the same rather than being reduced. All in all there will be less net usable area on the lower level after the remodel than there was before the remodel. Specifically, the gross area of the lower level is about 3,060 sq. ft., but the usable-occupied space will only be about 1,662 sq. ft. This means that only about 54%, or a little over half, of the lower level space will be regularly occupied by persons who need parking. (In addition, 295 sq. ft. of the 1,662 sq. ft. is intended as storage for the denture clinic, which, although technically occupied space, does not generate a need for actual parking since the parking for the denture clinic personnel is already accounted for on the upper level.) This percentage is much lower than the typical office building and clearly justifies the variance being requested.

The Cost of Paving the Alley is High and Not Justified In this Case

The Olsons have taken one of the least attractive buildings on Grand Avenue and turned it into one of the most attractive buildings on the street. Unfortunately, that transformation has not come cheap, and the project has ended up costing significantly more than the Olsons originally envisioned. They simply do not have the money to pave the alley, and they will not do so, even if it means having to convert the lower level to unproductive, uneconomical "storage" space just to satisfy the City's parking requirements.

In this case the high cost of paving the alley is not commensurate with any offsetting public benefit. Promoting cut-through traffic will actually endanger public safety, and the handful of extra parking spaces that could be obtained by using a diagonal parking layout are not necessary to service the building. The Olsons have not increased the size of their building or materially increased the overall parking load. They should not be punished to the tune of \$25,000 to \$30,000 just because they want to improve what used to be one of the ugliest buildings in town.

Conclusion

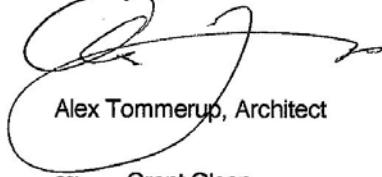
Our estimate is that parking requirements for this building used as designed would be 9

@ Architecture, Inc.
848 Main St., Suite 7, Billings, MT 59105
406.245.2724 fax - 245.0207 cell: 406.698.1582
alex@atarchitecture.com

WEST PARK DENTURE CLINIC, 1826 Grand Avenue
PLAN REVIEW: 06-1129
Request for Variance, 11/08/06

spaces for the upper floor (if characterized as office) and 6 to 8 spaces for the usable portion of the lower level, depending on the type of office use (1,662 sq. ft. of usable space divided by 300). Together these total 15 to 17 spaces. We are requesting approval for 17 spaces, which will easily satisfy the actual need for parking at the site, promote public safety, and avoid unnecessary expense for the owners. The variance will serve the public interest and welfare and will not conflict with any adopted zoning regulations, growth policy, or subdivision regulations. We respectfully request that the City Council grant this variance for all the reasons stated above. If the Council or City staff believes that it would be helpful if the approaches along Grand Avenue were widened to make it easier to enter and leave the property, the owners would not object if that requirement were made a condition of granting the variance.

Thank you,



Alex Tommerup, Architect

cc: Grant Olson
William A. Cole

@ Architecture, Inc.
848 Main St., Suite 7, Billings, MT 59105
406.245.2724 fax - 245.0207 cell: 406.698.1582
alex@atarchitecture.com

— / —

COLE LAW FIRM, PLLC

FIRST INTERSTATE CENTER, SUITE 1650
401 NORTH 31ST STREET, BOX 7052
BILLINGS, MT 59103-7052

TELEPHONE (406) 294-5700
FAX (406) 294-5702

William A. Cole
bcole@colefirm.com

OCT 12 2006

October 11, 2006

Tyler Westrope
Staff Engineer I
Engineering Division
Public Works Department
501 N. Broadway, 4th Floor
Billings, MT 59101

RE: 1826 Grand Avenue – West Park Denture Clinic

Dear Tyler:

Pursuant to our previous telephone conversations, the purpose of this letter is to request that the City Engineering Division approve a revised site and parking plan for the building permit that was previously issued to my clients, Grant and Bethany Olson, who are the owners of West Park Denture Clinic. The building permit is #06-1129, and it was issued in late July or early August 2006. The revised plan is attached to a cover letter from the Olsons' architect, Alex Tommerup, which is included with this letter.

Background

As you know, the upper floor of 1826 Grand Avenue will house my clients' denture clinic, and the lower floor is intended to be general office space. The footprint and height of the building will not change, except a new entrance area will add about 400 sq. ft. of new floor space. The addition is 7.5% of the building's original area (5,320 sq. ft.).

Tyler Westrope
October 11, 2006
Page 2

The previous parking plan was designed with the goal of providing 23 parking spaces, including 18 diagonal spaces that would exit onto the alley. As a condition to issuing the parking permit, the City required that my clients pave the alley behind their property plus approximately 90 feet to the east. The City imposed this requirement even though the property already had diagonal parking that forces drivers to exit onto the alley and even though the size of the building is not being appreciably increased. Paving would add approximately \$30,000 to the cost of the project. The City did not conduct a study or provide any evidence that the paving requirement is necessary to mitigate any new harm or that the "paving remedy" is "roughly proportional" to the problem that is supposed to be solved. Under the U. S. Supreme Court's decision in Dolan v. City of Tigard, 512 U.S. 374 (1994), such a showing is necessary whenever local governments impose exactions on property developers to pay for off-site public improvements.

The original parking plan was submitted based on the assumption that 23 parking spaces were required under Billings Municipal Code Sec. 6-1203 (Off-Street Parking Requirements) and that the only way to fit them on the property was to place them pointed diagonally toward the alley. For the reasons stated below, I believe that this assumption was not accurate because a minimum number of parking spaces is not required for this remodeling project. The proposed new parking configuration includes a slightly smaller number of parking spaces (18) that are arranged at a 90-degree angle to the curb. Since drivers will come and go on Grand Avenue, access to the alley will be blocked and any need for paving the alley will be eliminated. The details of the new configuration are depicted in Alex's submission.

The Off-Street Parking Requirements Do Not Apply To The Limited Expansion Of This Property

The parking space requirements imposed by Section 6-1203 apply in three situations, none of which exist here. First, according to Sec. 6-1203(a), the off-street parking requirement must be satisfied "at the time of erection of any building or structure." The current project is a remodel; it does not involve erection of a new building. The existing building was constructed in 1978, and Sec. 6-1203 was not enacted until 1984. It is simply unfair to apply new standards that require more parking spaces to this small site that was originally designed based on older, less stringent standards.

Tyler Westrope
October 11, 2006
Page 3

Second, Sec. 6-1203(a) also makes the off-street parking requirements applicable at the time of any “change in occupancy” of any building or structure. The phrase “change in occupancy” is a term of art in the construction industry that is widely understood to refer to a fundamental change among the broad categories of building usage that are the basis for different types of regulations under the International Building Code, fire codes, and Montana statutes. For example, M.C.A. §§ 50-61-101 through 121 (fire safety and public buildings) authorizes the Department of Justice to adopt different rules for six “occupancies” that are carefully defined in § 50-61-103, including “Assembly occupancy,” “Business occupancy,” “Educational occupancy,” “Industrial occupancy,” “Institutional occupancy,” and “Residential occupancy” (emphasis added). See also Chapter 3 of International Building Code describing occupancy classifications. A change from one of these broad categories of occupancy to another category constitutes a major change in the nature of the building. The off-street parking requirements are intended to apply only to new construction or in similar situations when there is a fundamental change in the nature of the property that constitutes a change of “occupancy” as described in M.C.A. § 50-61-103 and other building codes.

In this case my clients will have a “Business occupancy,” which means an occupancy “for office, professional, or service transactions.” M.C.A. § 50-61-103(2). This is the same occupancy as existed before the renovation when the building was used for general office space. If the city council had intended for Sec. 6-1203(a) to trigger the parking requirements whenever there is a minor change in the use of an otherwise “grandfathered” building it could have said so in explicit terms, but it did not. To the contrary, the table in Sec. 6-1203 that sets out specific parking requirements in Sec. 6-1203 never refers to the various business types as “occupancies.” Instead, the heading at the top of the column is titled simply “Use.” Sec. 6-1203(a) should not be read to impair my clients’ natural right to use their property when the city council did not clearly intend such a result. See generally M.C.A. §1-2-104 (“When a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.”)

Third, the code provision that governs expansion and enlargement of existing structures, Sec. 6-1203(c), does not apply in this case. It provides:

(c) *Expansion and enlargement.* Whenever any building is enlarged in height or in ground coverage, off-street parking shall be provided for the expansion or enlargement in accordance with the requirements of this section, provided, however, that no parking space be provided in the case of enlargement or expansion, where the number of parking spaces required for such expansion or enlargement is less than ten (10) percent of the parking spaces required for the enlarged facility as specified in this section. Nothing in this provision shall be construed to require off-street parking spaces for the portion of such building existing on May 3, 1972.

(Emphasis added.) Sec. 6-1203(c) only requires compliance with parking requirements when the expansion is significant in size and scope. It includes an exception that expressly states no additional parking must be provided “when the number of parking spaces required for such expansion or enlargement is less than ten (10) percent of the parking spaces required for the enlarged facility.” Because the small expansion in this case, which merely creates a little additional circulation space at the entrance of the building, is easily under the 10 percent threshold, the parking requirements do not apply. (Even if the requirements did apply, additional off-street parking would only have to be provided “for the expansion or enlargement” and not for the rest of the building.)

Conclusion

In summary, the subject building was constructed before the existing parking requirements were enacted and has been “grandfathered.” The minor changes that are contemplated by my clients do not trigger a need for additional parking spaces or necessitate access onto the alley. The new parking plan designed by Alex Tommerup restricts access onto the alley and should be approved as a modification of the existing building permit.

If the Engineering Division disagrees with the analysis described above we would welcome the opportunity to sit down and discuss the matter further. If that is the case please contact Alex Tommerup or myself to set up a meeting time. On the other hand, if you agree that the building permit should be revised to include Alex’s alternative design please provide us with written confirmation at your earliest convenience.

Tyler Westrope
October 11, 2006
Page 5

If this request is denied my clients still do not intend to pave the alley. Instead they would likely change the type of usage being proposed for part of the lower level (for example to storage) so that they can reduce the number of parking spaces and still use the new right-angle parking configuration. Although such a change should not be necessary for the reasons stated above, this interim solution would nevertheless allow them to complete construction of the upper floor and the parking lot while they seek a variance or take other legal action to clarify the applicability of the parking requirements to this project. Either way my client intends to build a curb or include a barrier that will prevent access onto the alley and thereby eliminate the need for paving the alley.

With your permission I have taken the liberty of sending a copy of this letter to Chris Hertz for his review when he returns to the office. If you have any questions about the technical aspects of the new parking configuration you should feel free to discuss them with Alex Tommerup.

Thank you for your attention to this matter.

Very truly yours,



William A. Cole

WAC:bt
enclosure
cc: Grant and Beth Olson
Alex Tommerup
Chris Hertz
Don Jones

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Public Hearing for Resolution Authorizing Disposal of a Portion of Lot 10, Block 5, O'Leary Subdivision

DEPARTMENT: Public Works

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings owns Lot 10, Block 5, O'Leary Subdivision as shown on the attached map. Lot 10 was dedicated to the public as a "planting strip" when O'Leary Subdivision was platted in 1958. The "planting strip" was not necessary to satisfy a park dedication requirement when the subdivision was platted. The City of Billings desires to exchange a portion of this Lot 10 (approximately 2,636 square feet) with the adjoining landowner, Linde Properties LC (Dr. Brian Linde of Heights Eyecare), for a right-of-way dedication from Linde Properties LC along Lake Elmo Road (approximately 3,222 square feet). In 1996, an agreement was signed to affect this exchange, but no legal documents were prepared and filed at that time. An exchange of this nature would be considered a "disposal" of City property because the planting strip was platted and dedicated as a lot, not as a right-of-way. The exchange will be accomplished with a plat relocating the common boundary and dedicating the right-of-way to the City and with a deed from the City to Linde Properties LC for the portion of the Lot 10 planting strip. Council authorized the Notice of Intent to Dispose of this territory on October 23, 2006, and the public hearing notice was advertised on November 2nd and 9th, 2006.

ALTERNATIVES ANALYZED:

- Approve the Resolution Authorizing Disposal of a Portion of Lot 10, Block 5, O'Leary Subdivision.
- Do not approve the Resolution Authorizing Disposal of a Portion of Lot 10, Block 5, O'Leary Subdivision.

FINANCIAL IMPACT: Approving the Resolution Authorizing Disposal would have no cost. The exchange of a portion of the Lot 10 planting strip for a right-of-way dedication from Tract B of CoS 606, Amended Plat of Lots 1 and 2, would also have no cost.

RECOMMENDATION

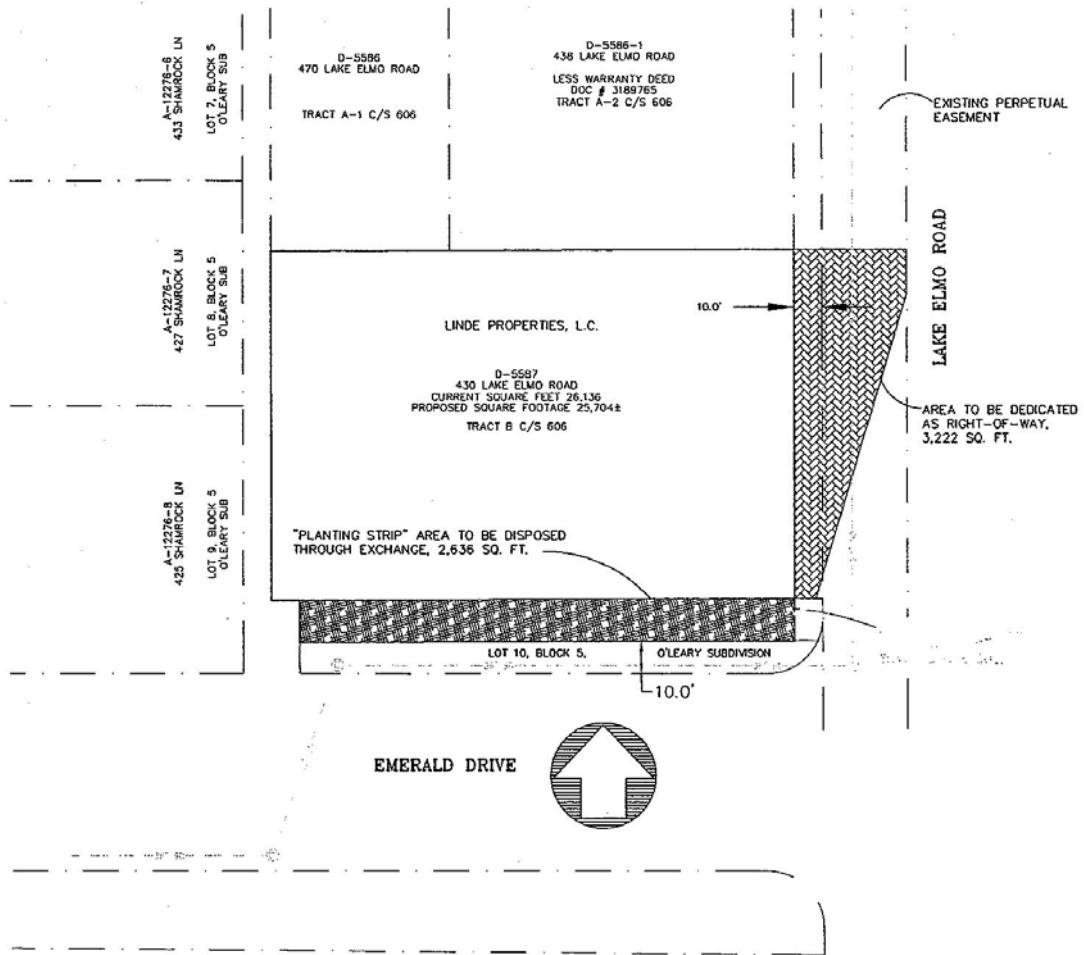
Staff recommends that Council approve the Resolution Authorizing Disposal of a Portion of Lot 10, Block 5, O'Leary Subdivision.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- Map depicting Proposed Lot 10 and Right-of-Way Boundaries (1 page)
- Resolution Authorizing Disposal of a Portion of Lot 10, Block 5, O'Leary Subdivision

ATTACHMENT A
PROPOSED LOT 10 AND RIGHT-OF-WAY BOUNDARIES



DRAFT: 10/02/06

RESOLUTION 06-_____

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE DISPOSED, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located on Emerald Drive and described as a portion of Lot 10, Block 5, O'Leary Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file under Document #597508, recorded on February 27, 1958, in the office of the Yellowstone County Clerk and Recorder's office, and more particularly described as:

Beginning at a point, said point being the Northwest corner of Lot 10, Block 5, O'Leary Subdivision; thence N 89°46'00" E a distance of 175.70 feet; thence S 00°00'00 E a distance of 15.00 feet; thence S 89°46'00" W a distance of 175.70 feet; thence N 00°00'00" E for a distance of 15.00 feet to the Point of Beginning. Said property contains 2,636 square feet.

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 27th day of November, 2006;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

That the City staff is authorized to proceed with the disposal of a portion of Lot 10, Block 5, O'Leary Subdivision, under the requirements of Section 22-902 of the Billings, Montana City Code.

APPROVED AND PASSED by the City Council of the City of Billings this 27th day of November, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Public Hearing and Resolution to Dispose of City-Owned Personal Property – Located at 1525 54th Street West, Billings, Montana.

DEPARTMENT: Fire Department

PRESENTED BY: John Staley, Deputy Chief
Liz Kampa-Weatherwax, Parking Supervisor

PROBLEM/ISSUE STATEMENT: The City of Billings recently requested bids for the purchase and removal of city-owned personal property (a house) at 1525 54th Street West. The request for bids was needed because the property is located on the land intended for the new Fire Station. The City advertised for bids on October 19 and 26, and bids were opened on November 14, 2006. No bids were received for purchase of said property.

ALTERNATIVES ANALYZED: City staff has considered the following alternatives for the above-referenced property: (1) Re-advertise the sale of the property; or, (2) Demolish said property and incur costs do so.

FINANCIAL IMPACT: The land was acquired for construction of a new Fire Station at 54th Street West by the Billings Fire Department. This sale would add funds to the Fire Department's revenue for possible use toward the construction of the fire station, as well as removing the personal property located on that land, which would have to be completed at some time.

RECOMMENDATION

Staff recommends that the Council approve the attached resolution authorizing the disposal of the personal property in the most expeditious manner for preparing the land for fire station construction.

Approved By: City Administrator City Attorney

ATTACHMENT

Resolution

RESOLUTION 06 - _____

A RESOLUTION DECLARING THE INTENT OF THE
CITY TO DISPOSE OF PERSONAL PROPERTY AND
AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings owns and desires to dispose of the personal property located at 1525 54th Street West, Billings, Montana; and,

WHEREAS, the location of the personal property to be disposed of is more particularly described as follows:

Personal Property located at 1525 54th Street West; Lot 2, Block 1, Bishop Fox subdivision. The personal property is a 4 bedroom, 1 1/2 bath, 2,852 sq. ft. home located on the land intended for a new fire station for the City of Billings; and,

WHEREAS, the notice of intent to dispose of personal property has been duly published; and

WHEREAS, a public hearing was held on the 27th day of November, 2006;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF BILLINGS, MONTANA AS FOLLOWS:

That the City staff is authorized to proceed with the sale of personal property located at 1525 54th Street West, Lot 2, Block 1, Bishop Fox Subdivision. If a sale cannot be executed, City staff is authorized to dispose of said property in the most expeditious manner for preparing the land for fire station construction.

APPROVED AND PASSED by the City Council of the City of Billings, Montana this _____ day of _____, 2006.

THE CITY OF BILLINGS:

BY: _____
RON TUSSING, MAYOR

ATTEST:

MARITA HEROLD, CMC/AAE, CITY CLERK

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6

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, November 27, 2006

TITLE: Approval of 2007 Montana Legislative Priorities
DEPARTMENT: City Council/City Administrator's Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: At a Nov. 6, 2006, Work Session, the City Council reviewed proposed priorities for the 2007 session of the Montana Legislature with City Lobbyist Jani McCall. The changes made at that session are reflected in the attached document, which the Council is being asked to approve before a meeting tentatively scheduled with Yellowstone County legislative delegation on Nov. 30, 2006.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the 2007 Montana Legislative Priorities as amended Nov. 6, 2006;
- Modify and approve the priorities; or
- Postpone action, resulting in having no presentation for the proposed Nov. 30 meeting with the Yellowstone County legislative delegation.

FINANCIAL IMPACT: If approved in the Montana Legislature, the proposed priorities would provide additional sources of revenue and limit the impact of adverse actions on the City's coffers.

RECOMMENDATION

Staff recommends that Council approve the 2007 Montana Legislative Priorities as revised Nov. 6, 2004.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS:

Attachment A: 2007 Montana Legislative Priorities

Attachment A



2007 Montana Legislature Legislative Priorities

5th DRAFT – 11/06/06

CITY OF BILLINGS

**210 North 27th Street ~ P. O. Box 1178 ~ Billings, MT 59103-1178
(406) 657-8433, (406) 657-8390 Fax ~ <http://ci.billings.mt.us>**

**City of Billings
LEGISLATIVE PRIORITIES**

Local Government Powers

The City of Billings strongly supports local control and self governing powers and the authority of local voters and elected mayors and councils to determine city and town issues. The City strongly resists legislative proposals and agency policies that would substitute state authority for local control.

The City of Billings supports in general the Montana League of Cities & Towns 2007 Legislative Resolutions.

Finance & Taxation

The City of Billings is committed to protecting the financial stability and discretion of cities and towns. The City supports: 1) An overall tax approach that is fair and balanced for the citizens of Montana and offers a diversification of tax revenues; 2) A good tax base should provide funding to promote economic growth and provide for necessary services and infrastructure to keep pace with the demands of growth; 3) Legislation that promotes financial stability through grant and loan assistance for capital improvements and other programs; 4) Continuation of and full funding for the Entitlement Program; and 5) Oppose unfunded mandates.

VOTER APPROVED LOCAL OPTION/RESORT TAX AUTHORITY FOR LOCAL GOVERNMENTS

The City supports legislation to remove limitations in the current resort tax law to allow all communities the opportunity to determine, through voter approval, to implement such a tax and for what purposes they choose, such as taxing goods and services directly connected to tourist economy.

~~As an secondary alternative the City supports legislation for a voter-approved local option tax of up to 4% on goods and services connected to the tourism economy, with 25% of the tax collections going into a regional revenue sharing account.~~

~~STATEWIDE SALES TAX~~

~~The City supports a statewide sales tax with the current constitutional cap of 4%.~~

ACCOMODATIONS TAX DISTRIBUTION

The City supports legislation to distribute 3% of the accommodations tax to the local governments where it is collected to cover the cost of services and facilities. The City supports a voter approved local option lodging tax not to exceed 3%.

BUSINESS EQUIPMENT TAXES

The City supports legislation to reimburse local governments for the loss of revenue that occurred when the tax exemption on business equipment was increased by \$20,000.

TAX INCREMENT FINANCE & BUSINESS IMPROVEMENT DISTRICTS

The City supports continuation of Tax Increment Finance Districts that allow municipalities to invest in the re-development of our **urban** business and residential areas.

REALTY TRANSFER TAX

~~The City supports allowing cities and counties to adopt a realty transfer tax of up to 1% with voter approval, committing 5% of the proceeds for property tax relief and providing local governments the discretion to determine to use of the remaining proceeds and provide exemptions.~~

OTHER

The City supports legislation to:

- Revise the Public Defender Law to require that the growth factor for the Entitlement Program be applied before assessments are subtracted.
- Clarify the law on the phase-in of property values after each reappraisal cycle and its application to new construction~~contractions~~.
- Allow local governments to attach insurance claim payments to cover the cost of demolishing structures that have been destroyed by fire or other causes.
- Prohibit state agencies from requiring unreasonable indemnification clauses as a condition of loans made to local governments.
- Allow cities and towns to adopt separate water and sewer rates for low income residents.
- Fund continuation of the Main Street Program at the level recommended in the executive budget.
- Require written requests for reproduction of public information.
- Monitor all bills relating to Shiloh Road in Billings.

Land Use, Property & Environmental Regulation

ANNEXATION AND DEVELOPMENT STANDARDS

The City of Billings strongly supports legislation that promotes local authority to provide services, manage operations and decide on local issues. The City supports local authority over planning and zoning, over regulation of subdivisions and other developments, over protection of annexation rights, and over the right to impose development and impact fees to ensure that new development pay a share of the cost of the services and facilities that are required to accommodate growth.

The City supports legislation to:

- Allow local governments to be noticed of potential land use lawsuits based on procedural defect and an opportunity to correct the error "right to cure" before the suit is filed.
- Eliminate restrictions on annexation authority for wholly surrounded properties when the annexation is in accordance with a growth policy.
- Require a pre-application meeting with sub-dividers, which Billings already does and clarifying existing requirements.
- Provide subdivision exemptions to:
 - Eliminate outright "court ordered" subdivision exemptions and require notification and comment by the governing body.
 - Establish requirements for a "mortgage" subdivision exemption.
 - Require all divisions of land exempt from subdivision review to provide for utility easements, legal and physical access.

APPROPRIATE REGULATORY AUTHORITY

The City supports affirming municipal building codes enforcement authority. Public and life safety standards and services are essential to ensure consumer protection.

The City supports legislation to:

- Allow both a City, City-County Planning Board to serve as a zoning commission, by modifying the membership requirements.
- Modify and streamline the purpose and criteria for zone changes.
- Monitor all eminent domain bills that would further restrict the authority of local governments and private utilities to condemn property.

PRIVATIZATION

The City will monitor all legislation regarding privatization of public services, products and facilities. The City currently contracts with the private sector when it is in the best interests of residents, but will oppose any attempts to privatize areas, such as solid waste services and parks and recreation, that could result in higher costs, limited access, loss of oversight and accountability, as well as other unanticipated consequences.

Public Health, Safety and City Employee Relations

THE CITY OF BILLINGS SUPPORTS AND PROMOTES PUBLIC SAFETY AND HEALTH. MUNICIPALITIES PROVIDE POLICE, FIRE EMERGENCY MEDICAL AND OTHER SERVICES THAT PROTECT HOMES, BUSINESSES AND THE HEALTH, SAFETY AND SECURITY OF MONTANANS AND VISITORS.

The City of Billings will support and/or monitor the following legislation:

- Primary enforcement of safety belt laws under state and local ordinance.
- Primary enforcement of helmet laws under state and local ordinance.
- Enhancing Emergency Communication Services, State 911 Commission recommendations and funding of same.
- Allowing suspended firefighter to accept the disciplinary action and waive the right to a hearing before the City Council or the personnel review board.
- Requiring that the "Last Best Offer Package" in police arbitration be submitted no later than 14 days prior to the hearing. Under current law the package can be submitted at any time within 14 days of the hearing.
- Public health/disease related legislation.
- Public Employees Retirement System.
- State Library Board and other library legislation.
- Family Drug Court legislation.
- Mental health/co-occurring funding.
- Fire District contracts with Class One cities.

Community & Regional Private/Public Coalitions & Partnerships

THE CITY OF BILLINGS SUPPORTS LEGISLATIVE INITIATIVES THAT ENHANCE OUR COMMUNITY, REGIONAL, PRIVATE AND PUBLIC PARTNERS TO IMPROVE THE QUALITY OF LIFE FOR ALL CITIZENS

Quality Education

The City of Billings supports quality education in our community from pre-school through higher education and the resources necessary to ensure it. We support continued development of a strong two year community college with vocational and technical components, both 2 and 4 year degrees in health-related areas and the development of a research and development component at the university level.

Quality Health Care

The City of Billings supports the continued quality health care, education and research provided by our medical corridor for our community and the greater region and the resources necessary for future success. We also support improved access to health care and human service benefits for all children, adults and families.

Economic Development

The City of Billings supports multiple strategies to maximize its economic and community potential and support economic development for our region as well including: venture capital formation and workforce training incentives.

JM/TV/Leadership Team/City Council Work Session

11/06/06

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Extending Baseball Steering Committee Appointments

DEPARTMENT: City Council/City Administrator's Office

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: At a work session in mid-2005, a steering committee of Councilmembers, staff and citizens representing various groups involved with Cobb Field was formed to coordinate the efforts to replace the baseball stadium. With new ballpark construction approved by the voters on Nov. 7. 2006, Councilmembers have asked that the Steering Committee be continued and consulted on future phases of the project. The Steering Committee's recommendations will be passed along with those of the Parks, Recreation & Cemetery Board to the City Council for the Council's decisions related to the design and construction of the new ballpark. City Code Sec. 2-224. Ad Hoc Council Advisory Committees, requires that the purpose, scope, composition and duration of the committee be defined in a resolution. A proposed resolution for the Ballpark Steering Committee is attached.

ALTERNATIVES ANALYZED: The City Council may:

- Approve the continued use of the existing Steering Committee as a consultant on issues related to the design and construction of the new ballpark;
- Modify the Steering Committee to include new or fewer members;
- Thank the Steering Committee for its work during the concept definition and campaign, but rely solely on the Parks, Recreation & Cemetery Board for recommendations.

FINANCIAL IMPACT: None. The citizen members of the Steering Committee are advisory volunteers, and the City Council would make any final decisions on the design and construction of the new ballpark.

RECOMMENDATION

Staff recommends that Council approve the continuation of the Steering Committee as an advisory body during the design and construction of the new ballpark.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A. Resolution extending the Ballpark Steering Committee Appointments

Attachment A

RESOLUTION NO. 06-_____

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF BILLINGS, MONTANA,
AUTHORIZING CONTINUED OPERATION
OF AN AD-HOC BALLPARK STEERING COMMITTEE**

WHEREAS, an ad-hoc Steering Committee was created in mid-2005 to advise the City Council on the feasibility and concept design of a new ballpark and the passage of a mill levy to fund it; and

WHEREAS, the Steering Committee included representatives of the City Council; the neighborhood surrounding the ballpark site; the Billings Mustangs, MSU-B and American Legion Baseball, which all sponsor teams that play in the ballpark; and City staff serving as non-voting, ex-officio support; and

WHEREAS, a bond issue to pay for the demolition of Cobb Field and the construction of a new ballpark on the same site was approved by a majority of the voters of the City of Billings in an election on Nov. 7, 2006; and

WHEREAS, the City Council has expressed a desire to have the Steering Committee continue to make recommendations along with the Parks, Recreation & Cemetery Board to the City Council on issues related to the design and construction of the new ballpark; and

WHEREAS, according to Sec. 2-224. Ad hoc council advisory committees of the City Code, the City Council must adopt a resolution identifying the purpose of an ad-hoc committee, the scope of its responsibilities, the composition of the committee and the duration of its service.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. The duties of the Ballpark Steering Committee are hereby formally extended to include providing advice along with the Parks, Recreation & Cemetery Board to the City Council on design and construction of the new ballpark for the City Council's final decision.

2. Building plans, concepts, timetables and related issues will be reviewed with the Steering Committee by the architects and City staff for the purpose of obtaining the members' comments on them.
3. The Ballpark Steering Committee will consist of City Councilmembers Richard Clark, Jim Ronquillo and Vince Ruegamer; neighborhood representative Shirley McDermott; Woody Hahn, Joe Studiner, Jim Iverson and Ron May, representing the organizations that will provide baseball programs at the new ballpark; a member to be named by the Parks, Recreation and Cemetery Board; and, as ex-officio, non-voting members, City Facilities Director Saree Couture, PRPL Director Mike Whitaker and Park Planner Mark Jarvis.
4. The Ballpark Steering Committee will meet at least monthly until a new ballpark is constructed and opened in June 2008.

Passed and approved this 27^h day of November 2006.

THE CITY OF BILLINGS

By: _____
Ron Tussing, Mayor

ATTEST:

By: _____
Marita Herold, CMC/AAE, City Clerk

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8A

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: National League of Cities Voting Delegate and Alternate

DEPARTMENT: City Council/City Administrator's Office

PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: Each year at the Congress of Cities, National League of Cities (NLC) direct members such as Billings are entitled to vote for NLC Officers and National Municipal Policy positions. To be eligible to vote at the annual business meeting being held Dec. 9, a city must designate a voting delegate and an alternate. At the Nov. 4, 2006, work session, Councilmember Veis was selected as the delegate and Councilmember Gaghen as the alternate. The Council needs to formally vote to approve these nominations.

ALTERNATIVES ANALYZED: The City Council may:

- Ratify the appointments; or
- Modify the appointments.

FINANCIAL IMPACT: None known at this time.

RECOMMENDATION

Staff recommends that Council approve the nomination of Councilmember Veis as the voting delegate and Councilmember Gaghen as the alternate at the 2007 Congress of Cities meeting.

Approved By: **City Administrator** **City Attorney**

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8B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, November 27, 2006

TITLE: Council Appointment to Joint Community Library Project at COT
DEPARTMENT: City Council/City Administrator's Office
PRESENTED BY: Tina Volek, City Administrator

PROBLEM/ISSUE STATEMENT: At an Oct. 16, 2006, work session, the Library Board and City Council discussed a committee to investigate a Joint Library Project at the Montana State University-Billings College of Technology (MSU-B COT). MSU-B President Ron Sexton has asked that a Councilmember be appointed to serve on the committee. Councilmember Gaghen, who has ties to the college as well as the City, has volunteered to serve.

ALTERNATIVES ANALYZED: The City Council may:

- Appoint a member;
- Delay the appointment; or
- Decide not participate.

FINANCIAL IMPACT: The Library /City will be asked to contribute a match to the \$250,000 grant received by MSU-B for the COT feasibility study.

RECOMMENDATION

Staff recommends that Council appoint Councilmember Gaghen to the feasibility study committee.

Approved By: **City Administrator** **City Attorney**

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